TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 280.

COPPER QUEEN CONSOLIDATED MINING COMPANY,
APPELLANT,

vs.

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FILED MAY 1, 1906.

(20,236.)

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a In the Supreme Court of the Territory of Arizona.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari

against

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bauman, Frank H. Parker, John X. Woods, and Charles F. Solomonville.

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1 In the Supreme Court of the Territory of Arizona.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari

against

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bauman, Frank H. Parker, John X. Woods, and Charles F. Solomon.

TERRITORY OF ARIZONA, *County of Cochise, ss:*

Walter Douglas, being duly sworn, deposes and says: That the Copper Queen Consolidated Mining Company is a corporation duly created and existing by virtue of the laws of the State of New York, and is duly authorized to conduct its corporate business in the Territory of Arizona;

That deponent is the General Manager and duly qualified and appointed resident corporate agent of said Company, which is beneficially interested in this application and the matters herein complained of, and resides at the City of Bisbee, in the County of Cochise, said Territory;

That the above named applicant is the owner of a large amount of real and personal property situate in Cochise County which
2 is used and required in conducting its corporate business in said County, which property is subject to assessment and taxation for County and Territorial purposes;

That the property of the above applicant includes certain patented mines, work horses and saddle horses situate in said County, which were returnable by said applicant to the County Assessor of said County for taxation for the year 1905, and said property was listed for taxation by said Assessor upon the assessment roll of said year, and said property of said applicant is included within the property the valuation of which is unlawfully increased by said unlawful action of said Territorial Board of Equalization herein complained of and set forth;

That the persons above named constitute the Territorial Board of Equalization;

Deponent alleges that the said Board on the seventeenth day of August, A. D., 1905, having under consideration the value of real and personal property among the several counties of the Territory of Arizona, and having under examination *of* the various assessments so far as regards the Territorial tax is concerned, and whether the valuation of property in each county bears a fair relation or proportion to the valuation of all other counties in the Territory, the same being a judicial matter, and the said Board exercising judicial functions in that behalf, without authority of law, and in excess of the jurisdiction conferred upon it by law, added to the valu-
3 ation of patented mines in the County of Cochise, which had been fixed by the County Assessor of said County at two hundred and twenth-three thousand eighteen dollars and forty-seven cents ($223,018.47), fifteen hundred per cent. (1500%) thereof, which was an increase of three millions three hundred and forty-five thousand two hundred and seventy-seven dollars and five cents ($3,345,277.05);

That the said Board in like manner, and without authority of law, and in excess of its jurisdiction, on said seventeenth day of August, A. D., 1905, by order, added to the valuation of work horses in said County for the purpose of taxation of the same, which had been fixed by the County Assessor of said County at fifty thousand two hundred and eleven ($50,211.) dollars, nineteen (19%) per cent. thereof, which was an increase of nine thousand nine hundred and eighty-nine ($9,989.) dollars;

That said Board in like manner, and without authority of law, and in excess of its jurisdiction, on said seventeenth day of August, A. D., 1905, by order, added to the valuation of saddle horses in said County, which had been fixed by the County Assessor of said County at the sum of twenty thousand three hundred and ninety ($20,390.) dollars, thirty-one (31%) per cent. thereof, which was an increase of six thousand three hundred and fifty ($6,350.) dollars;

That each and all of these changes so made were, by the said Board of Equalization, certified to the Board of Supervisors of Cochise County by the Chairman and Secretary of said Board
4 of Equalization.

That the said Board, sitting for the purposes hereinbefore set forth, without authority of law and in excess of any jurisdiction conferred upon it, did order and adjudge that certain valuations of classes of property in each of the other counties of the Territory be increased by certain percentages, so that the amounts of increase or raise of said classes of property by said Territorial Board for the year 1905, over the respective amounts of assessed valuations of the taxing authorities as fixed and returned by them respectively to said Board of Equalization in the abstracts of assessments required by law to be duly filed and filed by the several counties, for the year 1905, with said Board of Equalization, were as set forth in the following tabulated statement of all the counties in said Territory:—

5 EXHIBIT —.

Statement Showing

	Total Values of all Property in the Several Counties of the Territ-y returned to the Territorial Auditor for the year 1905.	Amounts of Increase or Raise by the Territorial Board of Equalization for the year 1905.	Total Values of all Property in the Several Counties, Including the Raises Added by the Territorial Board of Equalization.
Apache	$968,361.91	$6,696.30	$975,058.21
Coconino	3,794,180.57	81.37	3,794,261.94
Cochise	8,839,346.71	3,370,216.60	12,209,563.31
Graham	4,344,250.79	2,158,130.64	6,502,381.43
Gila	2,197,466.58	996,731.70	3,194,198.28
Maricopa	10,582,919.49	55,500.81	10,638,420.30
Mohave	1,238,228.20	597,597.98	1,835,826.18
Navajo	1,504,767.54	2,336.50	1,507,104.04
Pinal	1,421,219.21	13,945.54	1,435,164.75
Pima	4,237,278.25	803,745.08	5,041,223.33
Santa Cruz	1,550,011.17	323,565.00	1,873,576.17
Yuma	1,485,895.81	77,385.00	1,563,280.81
Yavapai	6,202,186.32	1,148,127.77	7,350,314.09
Aggregate of Assessments returned	Total $48,366,312.55	Total $9,554,060.29	$57,920,372.84
$.95 per $100	$459,479.97		
	$.95 per $100	$90,763.57	
		$.95 per $100	$550,243.54

6 That the aggregate valuation of all property in the several counties subject to taxation for Territorial and County purposes for the year 1905, and returned for said year to said Board by the several counties was forty-eight million three hundred and sixty-six thousand three hundred and twelve dollars and fifty-five cents ($48,366,312.55);

That said Board sitting for the purposes hereinbefore set forth, without authority of law, and in excess of any jurisdiction conferred upon it, not only proceeded to raise valuations of classes of property in said counties, but also raised and increased the aggregate valuation of the property in said counties to fifty-seven million nine hundred and twenty thousand three hundred and seventy-two dollars and eighty-four cents ($57,920,372.84), said sum being nine million five hundred and fifty-four thousand sixty dollars and twenty-nine cents ($9,554,060.29) over and above the aggregate amount of valuations of the property in all of said counties subject to taxation for Territorial and County purposes for said year 1905, as returned by the Clerks of the respective Boards of Supervisors of the several counties;

That in each and every of the aforesaid acts, said Board acted judicially and exceeded its jurisdiction;

That the said applicant has no appeal nor any plain, speedy and adequate remedy to obtain relief from said unlawful acts of said Board, except by writ of certiorari to review and set aside and vacate the said proceedings of said Board;

7 Wherefore, the said applicant prays that a writ of certiorari may be forthwith issued out of this Court by an Associate Justice thereof directed to said Territorial Board of Equalization commanding and requiring said Board to certify its record, proceedings and minutes of said meeting on said 17th day of August, and also the several abstracts of assessments furnished to and filed with said Board by the respective Boards of Supervisors of the several counties of this Territory showing the values of property in said respective counties prior to the raise and increase by said Territorial Board herein complained of, and also all other records and papers which in any manner relate to or exhibit the acts and proceedings of said Board herein complained of and referred to, to our Supreme Court at the City of Phœnix on the 27th day of September, A. D. 1905, and that the said Territorial Board of Equalization then and there show cause to our said Supreme Court, if any it shall have, why the acts and proceedings herein complained of should not be declared void and vacated and set aside, and that said corporation have such further or other order or relief as is meet and proper in the premises.

HERRING & SORIN,
Att'ys for Applicant.
WALTER DOUGLAS.

Subscribed and sworn to before me this 20th day of September, A. D., 1905.

FRANK E. COLES,
[SEAL.] *Notary Public, Cochise County, Arizona.*

My commission expires Nov. 6, 1907.

8 Let the writ issue returnable September 27th, 1905, at ten o'clock A. M., and it is expressly ordered that service thereof and a copy of said application be made by the Marshal of Arizona, or his deputy, upon the Territorial Board of Equalization by delivering the same to, and leaving the same with, Wesley A. Hill, Chairman of said Board at the City of Phœnix.

Dated September twenty-first, 1905.

JOHN H. CAMPBELL,
Associate Justice Sup. Court.

(Endorsed:) No. 927. In the Supreme Court of the Territory of Arizona. In the Matter of the Application of the Copper Queen Consolidated Mining Company, a corporation, for a Writ of Certiorari Against The Territorial Board of Equalization of the Territory of Arizona, composed of Wesley A. Hill, Chairman, and Thomas F.

Wilson, Charles Bauman, Frank H. Parker, John X. Woods, and Charles F. Solomon. Application for writ of certiorari. Filed Sept. 22, 1905, S. M. Cullom, Clerk. By Angie B. Parker, Deputy. Herring & Sorin, Attorneys for Applicant, Tucson.

9 In the Supreme Court of the Territory of Arizona.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari

against

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bauman, Frank H. Barker, John X. Woods, and Charles F. Solomon.

Writ of Certiorari.

The Territory of Arizona to the Territorial Board of Equalization of the Territory of Arizona, composed of Wesley A. Hill, Chairman of said Board, and Thomas F. Wilson, Charles Bauman, Frank H. Barker, John X. Woods and Charles F. Solomon, Greeting:

You are hereby commanded and required to certify fully to the Supreme Court of the Territory of Arizona, at the District Court House, at the City of Phœnix, on the 27th day of September, A. D., 1905, at ten o'clock of the forenoon of said day, and annex to this Writ a transcript of the record and proceedings and minutes of said Board of its meeting on the 17th day of August, A. D., 1905, and also the several abstracts of assessment rolls of the various

10 counties in the Territory for the year 1905 transmitted to the Territorial Auditor or obtained by said Territorial Board of Equalization from any source, and by said Board examined or considered, showing the assessment for 1905 and the valuations of property in said respective counties and the tax levy for 1905 on each $100.00 prior to the raise and increase by the said Territorial Board of Equalization at its said meeting; and also, all the statements transmitted by said Territorial Board of Equalization to the Boards of Supervisors of the respective counties of property in said counties for the Year 1905 as finally adjusted by the Territorial Board of Equalization showing the changes made, if any, from the returns of said Boards for said year, and also the tax levy for Territorial purposes, as levied by said Board of Equalization for said year 1905; and also, a transcript of all other records and papers which in any manner relate to or exhibit the acts and proceedings of said Board complained of and referred to in the application filed herein, that the same may be reviewed and duly inquired into by this Court;

And said Territorial Board of Equalization is commanded and required to show cause before our said Supreme Court on the 27th day of September, A. D. 1905, at the District Court House in the City of Phœnix, at ten o'clock of the forenoon of the said day, or as soon thereafter as counsel can be heard, why the acts and proceedings of said Board complained of in the application filed herein, should not be declared void and vacated and set aside.

11 Make due return of this Writ and the manner in which you have obeyed the same.

Witness, Honorable John H. Campbell, Associate Justice of the Supreme Court of the Territory of Arizona, on this 22nd day of September, A. D., 1905.

[SEAL.]

S. M. CULLOM,
Clerk of the Supreme Court.

I hereby certify that on the 22nd day of September, 1905, at Phœnix, Arizona, I served the within writ by personally delivering to Wesley A. Hill, Chairman of the Board of Equalization of the Territory of Arizona, a copy of said writ together with a copy of the application made therefor.

Dated at Phœnix, Arizona, September 22, 1905.

B. F. DANIELS,
U. S. Marshal.

(Endorsed:) No. 927. In the Supreme Court of the Territory of Arizona. In the Matter of the Application of the Copper Queen Consolidated Mining Company, a Corporation, for a Writ of Certiorari, Against The Territorial Board of Equalization of the Territory of Arizona, composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bauman, Frank H. Barker, John X. Woods and Charles F. Solomon. Writ of Certiorari. Filed Sept. 25, 1905. S. M. Cullom, Clerk, By Angie B. Parker, Deputy.

12 In the Supreme Court of the Territory of Arizona.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari

against

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bauman, Frank H. Parker, John X. Woods, and Charles F. Solomon.

Demurrer.

Comes now the Territorial Board of Equalization of the Territory of Arizona, by E. S. Clark, Attorney General, and demurs to the petition herein for the reason that said petition does not state facts sufficient to constitute a cause of action.

Wherefore, the said Board prays judgment as to the sufficiency of said petition, and for costs.

E. S. CLARK,
Attorney General.

(Endorsed:) No. 927. In the Supreme Court of the Territory of Arizona. In the Matter of the Application of the Copper Queen Con. Mining Co. for a Writ of Certiorari. Demurrer. Filed Oct. 17, 1905. S. M. Cullom, Clerk.

13 In the Supreme Court of the Territory of Arizona.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari

against

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bowman, Frank H. Parker, John X. Woods, and Charles F. Solomon.

Amended Application for Writ of Certiorari.

Comes now the above named applicant, before trial, and files its amended application for a writ of certiorari as follows:

TERRITORY OF ARIZONA, *County of Cochise, ss:*

Walter Douglas, being duly sworn, deposes and says: That the Copper Queen Consolidated Mining Company, the applicant herein, is a corporation duly created and existing by virtue of the laws of the State of New York, and is duly authorized to conduct its corporate business in the Territory of Arizona;

That deponent is the General Manager and duly qualified and appointed resident corporate agent of said Company, and resides in the City of Bisbee, in the County of Cochise, said Territory, and makes this affidavit in behalf of said applicant;

14 That said corporation is a resident and taxpayer of said Cochise County, and as such is beneficially interested in this application and the matters herein set forth and complained of;

That the said applicant is the owner of a large amount of real and personal property situate in said County which is used and required in conducting its corporate business in said County, which property is subject to assessment and taxation for county and Territorial purposes;

That said property includes certain patented mines, certain work horses and certain saddle horses situate in said county which were returned by said applicant to the Assessor of said County for taxation for the year 1905; that said property was thereafter listed for taxation by said Assessor upon the assessment roll of said County for said year, and is subjected to taxation for county and Territorial purposes for said year; that said property of said applicant, said Copper Queen Consolidated Mining Company, is included within the property the assessed valuation of which has been increased by the unlawful action of the Territorial Board of Equalization hereinafter complained of and alleged;

That the persons above named constitute, and at all times hereinafter referred to have constituted, the Territorial Board of Equalization of the Territory of Arizona;

That on the 14th day of August, 1905, as deponent is informed and believes and therefore alleges, the said Board met at the office

of the Territorial Auditor of said Territory, at Phœnix, and continued in session from day to day until after the 17th day
15 of August, 1905;

Deponent alleges that while said Board was so in session on said 17th day of August, 1905, having under examination the various assessments and abstracts of assessment rolls returned to it from the various counties in the Territory, so far as regards the Territorial tax, and having under consideration the question whether the valuation of property in each county bears a fair relation or proportion to the valuation in all other counties in the Territory, and with the alleged purpose of equalizing the rate of assessment in the various counties, the same being a judicial matter, and the said Board exercising judicial functions in that behalf, the said Board on said 17th day of August, without authority of law and in excess of the jurisdiction conferred on it by law, by order, added to the assessed valuation of patented mines in the County of Cochise for the year 1905, which had been theretofore fixed by the Assessor of said County and the Board of Equalization thereof, and returned in the abstract of the Assessment roll of said County above referred to, at $223,018.47, 1500 per cent. thereof, which was an increase of $3,345,277.05;

That the said Board in like manner, and without authority of law and in excess of its jurisdiction, on said 17th day of August, 1905, by order, added to the valuation of work horses in said County for the purpose of taxation of the same for the year 1905, which had been theretofore fixed by the Assessor of said County and the
16 Board of Equalization thereof, and returned in the abstract of the assessment roll of said County above referred to, at $50,211., 19 per cent. thereof, which was an increase of $9,989.;

That said Board in like manner, and without authority of law, and in excess of its jurisdiction, on said 17th day of August, 1905, by order, added to the valuation of saddle horses in said County for the purpose of taxation of the same for the year 1905, which had been theretofore fixed by the Assessor of said County and the Board of Equalization thereof, and returned in the abstract of the assessment roll of said County above referred to, at $20,390., 31 per cent. thereof, which was an increase of $6,350.;

Deponent is informed and believes and therefore alleges, that said Territorial Board of Equalization did not change the assessed valuation of any other class of property in said Cochise County for the purpose of taxation of the same for the year 1905, as fixed by said Assessor and said County Board of Equalization and returned in said abstract of assessment roll, except the assessed valuation of improvements on unpatented mines, which said assessed valuation was increased by said Territorial Board of Equalization by adding thereto 1000 per cent. of said valuation;

Deponent further alleges that while said Territorial Board of Equalization was so in session on said 17th day of August, 1905, for the purpose aforesaid, the said Board without authority of law and in excess of the jurisdiction conferred on it by law, by order increased the assessed valuation of some special class or classes
17 of property in each and every other county of said Territory, over and above the assessed valuation thereof for the year

1905, as fixed by the assessors and the boards of equalization of the respective counties and returned in the abstract of assessment rolls from said counties;

Deponent alleges that by so increasing the valuation of said special classes of property in said counties, said Territorial Board of Equalization increased the aggregate valuation of property in the following named counties (including each and every county in the Territory) over and above the aggregate valuations of property therein as fixed by the respective assessors and boards of equalization of said counties for the year 1905, and returned in the abstracts of assessment rolls from said counties, as follows, to-wit:

County.	Amounts of Increase by Territorial Board of Equalization.
Apache	$6,696.30
Coconino	81.37
Cochise	3,370,216.60
Graham	2,158,130.64
Gila	996 731.70
Maricopa	55,500.81
Mohave	597,597.98
Navajo	2,336.50
Pinal	13,945.54
Pima	803,745.08
Santa Cruz	323,565.00
Yuma	77,285.00
Yavapai	1,148,127.77
	$9,554,060.29

Deponent alleges that in no instance did said Territorial Board of Equalization diminish the aggregate valuation of property in any county as fixed by the assessor and board of Equalization of said County for the year 1906 and returned in the abstract of assessment roll of said county;

That by the said action of the said Territorial Board of Equalization in so increasing the said aggregate valuation of property in each and every county in this Territory, the said Board unlawfully increased the aggregate valuation of property in the Territory for the purposes of taxation of the same $9,554,060.29 over and above the sum of the aggregate valuations of the several counties therein as fixed, for the year 1905, by the assessors and boards of equalization of the respective counties and returned to the Territorial Auditor in said abstracts of assessment rolls of said counties, as will more fully and at large appear by reference to the tabulated statement above set forth;

Deponent alleges that each and all of the said changes so made in said assessed valuation of said property in said Cochise County were by the said Board of Equalization certified to the Board of Supervisors of Cochise County by the Chairman and Secretary of said Board of Equalization; that, as deponent is informed and believes and therefore alleges, the Board of Supervisors of said Cochise County thereafter ordered the said changes made by said Territorial

Board of Equalization in said assessed valuation of property in said County to be placed on the assessment roll of said County for said year 1905;

19 Deponent alleges that said last named Board caused the assessed valuation of the said patented mines, work horses and saddle horses owned by applicant herein, and which had been returned for taxation and listed on said assessment roll for 1905 as aforesaid, and were thereon assessed to applicant for said year (which assessed valuation had been theretofore fixed by said assessor and the board of equalization of said county as aforesaid) to be changed on said assessment roll to conform to the said changes made in the assessment of said respective classes of property by said Territorial Board of Equalization;

That the duplicate assessment roll of said County for the year 1905, embodying said changes, and with the warrant of the Chairman of the Board of Supervisors of said County thereto affixed, was thereafter delivered to the Tax-Collector of said County, and that the said Tax-Collector has made demand upon said applicant for the payment of the taxes appearing thereon to be due;

That by the action of said Territorial Board of Equalization in making the increases aforesaid, the assessed valuation of the property owned by and assessed to said applicant in said County, for purposes of taxation for said year 1905, was unlawfully and without authority of law changed and increased from the assessed valuation thereof for said year as fixed by the Assessor and Board of Equalization of said County and returned in said abstract of assessment roll of said County as follows, to-wit:

20

Patented Mines	from	$56,513.40	to	$904,214.40
Work Horses	"	$ 1,120.00	"	$ 1,332.80
Saddle Horses	"	$ 120.00	"	$ 157.20

thereby making a total increase of $847,951.00 in the assessed valuation of applicant's property in said County for purposes of taxation for said year 1905 over and above that fixed by said Assessor and Board of Equalization of said County for said year and returned in said abstract of said assessment roll, upon which increase applicant is required to pay taxes for said year 1905;

That in so proceeding to increase the aggregate valuation of property in the Territory as aforesaid and in so increasing the assessed valuation of special classes of property in said Cochise County and in the other said counties of said Territory, said Territorial Board of Equalization was exercising judicial functions and exceeded its jurisdiction;

That the said applicant has no appeal nor any plain, speedy and adequate remedy to obtain relief from said unlawful acts of said Board, except by writ of certiorari to review and set aside and vacate the said proceedings of said Board;

Wherefore, the said applicant prays that a writ of certiorari may be forthwith issued out of this Court by an Associate Justice thereof directed to said Territorial Board of Equalization commanding and requiring said Board to certify its record, proceedings and minutes

of said meeting on said 17th day of August, and also the several
21 abstracts of assessments furnished to and filed with said Board by the respective Boards of Supervisors of the several counties of this Territory showing the values of property in said respective counties prior to the raise and increase by said Territorial Board herein complained of, and also all other records and papers which in any manner relate to or exhibit the acts and proceedings of said Board herein complained of and referred to, to our Supreme Court at the City of Phœnix on the 17th day of November, A. D., 1905, and that the said Territorial Board of Equalization then and there show cause to our Supreme Court, if any it shall have, why its acts and proceedings herein complained of should not be declared void and vacated and set aside, and that said corporation have such further or other order or relief as is meet and proper in the premises.

WALTER DOUGLAS.

Subscribed and sworn to before me this 13th day of November, A. D., 1905.

FRANK E. COLES,

[SEAL.] *Notary Public, Cochise County, Arizona.*

My commission expires Nov. 6, 1907.

HERRING & SORIN,
Attorneys for Applicant, Tucson, Ariz.

(Endorsed:) No. 927. In the Supreme Court of the Territory of Arizona. In the Matter of the Application of the Copper Queen Consolidated Mining Company, a corporation, for a Writ of Certiorari against The Territorial Board of Equalization of the Territory of Arizona, composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bowman, Frank H. Parker, John X. Woods and Charles F. Solomon. Amended Application for Writ of Certiorari. Filed Nov. 16, 1905, S. M. Cullom, Clerk.

22 In the Supreme Court of the Territory of Arizona.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari
against
THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bowman, Frank H. Parker, John X. Woods, and Charles F. Solomon.

Comes now the above named respondent, the Territorial Board of Equalization of the Territory of Arizona, and by way of return to the Writ of Certiorari issued out of this Honorable Court pursuant to an order of Hon. John A. Campbell, Associate Justice of said Court, on the 22nd day of September, 1905, respectfully submits and files herewith as ordered in said Writ, duly certified, the record, proceedings and minutes of the meeting of said Board of Equaliza-

tion held on the 17th day of August, 1905, and also, likewise duly certified, the several abstracts of assessments furnished to and filed with said Board by the respective Boards of Supervisors of the several counties of this Territory, showing the values of property in said respective counties prior to the raise and increase by said Territorial Board of Equalization; and also the record of increases and decreases made by the Territorial Board of Equalization for each and every year since 1887; all of which is hereto attached and made a part hereof.

E. S. CLARK,
Attorney General of Arizona, for Respondent.

23 *Proceedings of the Territorial Board of Equalization, 1905.*

Office of the Territorial Board of Equalization.

PHŒNIX, ARIZONA, *August* 14, 1905.

In accordance with Paragraph 3879 (Section 49) Chapter LV, Title 62, Revised Statutes of Arizona of 1901, the Territorial Board of Equalization met this day at its office in the Capitol Building at Phœnix, Arizona at 10 o'clock A. M.

The meeting was called to order by the Chairman Hon. Wesley A. Hill.

The Secretary called the roll, which showed all members present as follows:

Alfred S. Donau, Member from First District.
Charles Bowman, Member from Second District.
Frank H. Parker, Member from Third District.
John X. Woods, Member from Fourth District.
Charles F. Solomon, Member from Fifth District.

Upon motion of Mr. Donau, seconded by Mr. Solomon, duly put and carried, the Board called upon the Governor at the Executive Chambers.

The Chairman presented the Board with the assessment rolls for the year 1905 of each of the several counties of the territory.

24 The Board then proceeded to determine the tax levy for territorial purposes for the current year 1905, and upon motion of Mr. Solomon seconded by Mr. Bowman, duly put and carried, the following was declared to constitute the same for the year 1905.

Tax Levy for 1905.

1. General Fund, Paragraph 3831, R. S. 1901	.1803
2. Insane Asylum Interest Fund, Paragraph 3615, R. S. 1901	.10
3. Normal School Fund, Paragraph 3702, R. S. 1901	.05
4. Territorial School Fund, Paragraph 2246, R. S. 1901	.03
5. University Fund, Paragraph 3652, R. S. 1901	.06
6. Prison Fund, Paragraph 3601, R. S. 1901	.12
7. Ranger Fund, Paragraph 3229, R. S. 1901	.05
8. Redemption Fund, Paragraph 3615, R. S. 1901	.0225

9.	Interest World's Fair Bonds. Act 103 Laws 1891.....	.003
10.	Interest Fund Paragraph 2047, Organic Act and Act of Congress of 1890.....	.13
11.	University Interest Fund, Paragraph 3663, R. S. 1901..	.005
12.	Capitol Interest Fund Act 9, Laws of 1897.....	.012
13.	Tempe Normal School Fund Act 38, Sec. 1, Laws of 1903	.025
14.	Tempe Normal School Building Fund, Act 48, Laws of 1903	.055
15.	University Interest Fund Act 47, Sec. 10, Laws of 1903.	.0017
16.	Northern Arizona Normal School Fund Act 71, Laws of 1903	.03
17.	Northern Arizona Normal School Fund, Sec. 2, Act 71, 1903	.015
18.	Tempe Normal School Building Fund Chap. 43, Laws 1905	.015
19.	Territorial Industrial School Maintenance Fund, Chapter 50, Sec. 1, Laws of 1905.....	.04
20.	Interest St. Louis Exposition Bonds Act 86, Laws 1901	.003
21.	Interest Insane Asylum Bonds, Act 73, Laws 1903....	.0025
		$0.9500

Mr. T. G. Norris then addressed the Board relative to a decrease in the assessment of the United Verde and Pacific Railroad.

The Board then took a recess until 2 o'clock P. M.

At 2 o'clock P. M. the Board reconvened, all members present.

Mr. S. A. Pattee, Assistant District Attorney of Yavapai County, Mr. John J. Birdno, Assessor of Graham County and Attorney General Clark addressed the Board relative to the assessment of copper mining properties in the territory.

Mr. T. G. Norris and Colonel M. J. Egan were present and made a few remarks.

The Board then adjourned until 10 o'clock A. M., August 15, 1905.

WESLEY A. HILL, *Chairman.*

Attest:

F. A. TRITLE, JR., *Secretary.*

Office of the Territorial Board of Equalization.

PHŒNIX, ARIZONA, *August* 15, 1905.

The Board met at 10 o'clock A. M. pursuant to adjournment, all members present.

A communication from the Milwaukee Refrigerator Transit Company in relation to its assessment was read.

Attorney General Clark addressed the Board relative to the assessment of mining properties.

26 The minutes of August 14, 1905 were read and approved.

It was moved by Mr. Donau, seconded by Mr. Bowman, that the assessment of the United Verde and Pacific Railroad Com-

pany be decreased from $4,029.304 per mile to $3,529.304 per mile, and the following was the vote on roll call.

Mr. Bowman Aye.
Mr. Donau Aye.
Mr. Parker No.
Mr. Solomon No.
Mr. Woods No.
Mr. Chairman No. And the motion was lost.

Mr. Doanu moved that the Chairman of the Board be authorized to furnish the Attorney General, this day, with a certificate showing what counties had failed to furnish a certified copy of their assessment rolls as required by the order of June 8, 1905; the motion was seconded by Mr. Bowman, and the vote was as follows:

Mr. Bowman Aye.
Mr. Doanu Aye.
Mr. Parker No.
Mr. Solomon No.
Mr. Woods No.
Mr. Chairman No. And the motion was lost.

The Board then took a recess until 2 o'clock P. M.

The Board reconvened at 2 o'clock P. M., discussed informally the assessment of patented mines and adjourned until 10 o'clock A. M., August 16, 1905.

27 WESLEY A. HILL, *Chairman.*

Attest:
F. A. TRITLE, JR., *Secretary.*

Office of the Territorial Board of Equalization.

PHŒNIX, ARIZONA, *August* 16, 1905.

The Board met pursuant to adjournment at 10 o'clock A. M. all members present.

The minutes of August 15, 1905, were read and approved. The Board then took a recess until 2 o'clock P. M. The Board met at 2 o'clock P. M. all the members being present and listened to statements made by John J. Birdno, Assessor of Graham County, Frank Luke, Assessor of Maricopa County, and Mr. Heron Deputy Assessor of Gila county, relative to the scale of valuations made by them in assessing the different classes of property.

It was then moved by Mr. Woods, seconded by Mr. Parker, that the returns of the various counties as to patented mines be accepted as returned except that in the following counties they be raised as follows:

Yavapai county, 100%; Cochise county, 1500%; Graham county, 400%; Mohave county 400%; Cila county 400%; Pima county 500%; Santa Cruz county 500%; and Yuma county 200%; and that the improvements on patented mines in the several counties be raised 100 per cent.

Mr. Doanu moved to amend that the Board proceed to take up the various items in their regular order. The vote was taken
28 on the amendment and resulted as follows:

Mr. Bowman, Aye; Mr. Doanu, Aye; Mr. Parker, No;

Mr. Solomon, Aye; Mr. Woods, No; Chairman, No. And the amendment was lost.

The vote was then upon the original motion and resulted as follows:

Mr. Bowman No.
Mr. Doanu No.
Mr. Parker Aye.
Mr. Solomon No.
Mr. Woods Aye.
Mr. Chairman Aye. And the motion was lost.

Mr. Doanu then renewed his motion that the items be taken up in their regular order; it was seconded by Mr. Parker and unanimously carried.

It was then moved by Mr. Parker, seconded by Mr. Woods, duly put and carried, that the returns from all the counties on cultivated lands and improvements be accepted as returned.

The Board then adjourned until 9 o'clock A. M. August 17, 1905.

WESLEY A. HILL, *Chairman.*

Attest:
F. A. TRITLE, JR., *Secretary.*

Office of the Territorial Board of Equalization.

PHŒNIX, ARIZONA, *August* 17, 1905.

The Board met pursuant to adjournment at 10 o'clock A. M. Mr. Alfred S. Donau having tendered his resignation, Mr. Thomas F. Wilson was by the Governor appointed the member from the First District. On roll call all members were present and the minutes of August 16, 1905 were read and approved.

29 It was moved by Mr. Parker, seconded by Mr. Woods duly put and carried that the regular order of business be dispensed with to listen to the attorneys of the foreign car lines.

Mr. Chas. E. Wilson of the Armour Car Lines and Continental Fruit Express Company addressed the Board and protested in whole and in part against the assessment.

Mr. Arthur C. Ide then addressed the Board on behalf of the Swift Refrigerator Transit Company.

The Board then took a recess until 1:30 o'clock P. M.

The Board reconvened at 1:30 o'clock P. M. and having examined the various assessments and the several abstracts of assessments rolls returned by the Clerk of the Board of Supervisors of each county, and having investigated the records of the offices of the Auditor and Treasurer as to matters relating to the assessment and taxation of property, and having considered the statements of assessors and others from various counties, as well as other information now find that the scale of valuation has been fixed by the various assessors and boards of equalization approximately as follows:

Counties.	Cultivated Lands.	Improvements.	Uncultivated Lands.	Improvements.	Railroad Lands.	Land Grants.	Improvements.	Town and City Lots.	Improvements.	Horses—Mange.	Horses—Work.	Horses—Saddle.	Stallions.	Mules.	Asses.	Cattle—Range.	Cattle—Beef.	Cattle—Milk.	Cattle—Bulls.	Sheep.	Goats.	Swine.	Railroads.	Merchandise.	All Other Property.	Patented Mines.	Improvements on Patented Mines.	Improvement on Unpatented Mines.
Apache	50	50	80	...	75	...	...	60	65	85	75	80	...	75	75	75	50	50	...	60	60	60	...	60	50	...	...	...
Cochise	50	50	80	...	...	40	...	50	60	60	60	75	80	60	75	75	50	50	40	...	...	...	50	50	45	10	.02	.05
Coconino	75	75	75	...	75	...	...	75	65	65	75	75	75	...	...	75	75	80	50	60	60	50	50	60	45	10	...	...
Gila	50	50	75	...	...	...	...	70	80	100	80	80	...	80	...	85	75	80	...	60	100	...	50	60	45	10	10	...
Graham	33⅓	50	100	...	...	...	...	80	60	100	80	75	...	100	100	100	...	...	...	60	60	...	50	60	40	10	20	10
Maricopa	50	50	50	...	...	...	...	60	60	100	80	50	...	50	50	50	...	...	...	60	60	...	50	60	33⅓	30	...	...
Mohave	60	60	80	...	100	...	...	60	60	70	75	75	...	...	...	75	...	...	...	60	60	...	...	60	33⅓	10	10	...
Navajo	80	60	80	...	80	...	...	80	80	70	75	75	...	...	...	75	...	...	...	60	60	...	50	60	33⅓	10	...	...
Pima	60	37½	...	...	...	37½	...	37½	60	70	70	70	...	...	...	70	...	50	...	60	60	...	50	60	33⅓	10	10	...
Pinal	60	60	...	...	...	...	...	60	60	70	70	70	...	...	...	75	50	50	...	60	60	...	50	60	33⅓	50	50	...
Santa Cruz	60	60	...	...	...	50	10	60	60	70	70	70	...	...	...	75	50	50	...	60	60	50	50	60	33⅓	10	20	...
Yavapai	50	50	75	...	75	40	...	60	60	70	70	70	...	...	...	75	50	50	...	60	60	50	50	60	33⅓	03	30	...
Yuma	25	25	25	...	...	25	...	25	25	70	70	70	...	...	...	75	50	50	...	60	60	50	50	60	33⅓	10	...	...

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And the Board being satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors and boards of equalization, and having ascertained that the valuation of property in each county does not bear a fair relation or proportion to the valuation in the other counties in the territory, and that in order to produce a just relation between all the valuations of property in the territory it is necessary that certain valuations be increased.

It is hereby ordered that valuations in the counties hereinafter named be and they are hereby increased by the following percentages.

31

Counties.	Town and city lots.	Horses, range.	Horses, work.	Horses, saddle.	Mules.	Cattle, milch.	Patented mines.	Improvements, unpatented mines.
Apache	.....	...	38		40	25	.....	.....
Cochise	.....	.....	19	31	.....	.....	1500	1000
Coconino	.....	.....	.....	.....	17	.....	.....	.....
Gila	.....	.....	59	.....	40	.....	400	.....
Graham	.....	.....	.....	.....	.....	.....	400	.....
Maricopa	.....	.....	60	.....	29	.....	.....	.....
Mohave	.....	.....	.....	.....	1	22	400	.....
Navajo	.....	.....	1	.....	100	24	.....	.....
Pima	33⅓	.....	66	.....	40	6	500	.....
Pinal	.....	60	66	12	52	.....	.....	.....
Santa Cruz	.....	.....	60	.....	60	.....	500	.....
Yavapai	.....	17	50	.....	50	½	100	.....
Yuma	.....	.....	60	25	40	25	500	.....

It was moved by Mr. Wilson, seconded by Mr. Solomon, duly put and carried, that the returns from all the counties be accepted as returned except as to the items above mentioned.

32 It was then ordered that the following schedules showing a recapitulation of the work of the Board be spread of record.

Apache County.

Number.		Valuation.	Per cent. Increased.
2,948	Acres Cultivated Land	$ 25,899.00	
	Improvements	6,715.00	
95,038	Acres, uncultivated land	45,654.75	
	Improvements	9,082.50	
788,522.37	Acres railroad lands	157,704.46	
	Town and city lots	12,477.00	
	Improvements	40,440.75	
1,686	Horses range	16,860.00	
435	Horses, work	17,400.00	38
453	Horses, saddle	9,060.00	
2	Stallions	125.00	
43	Mules	1,505.00	40
126	Asses	882.00	
6,016	Cattle, range and stock	72,192.00	
295	Milch cows	7,375.00	25
73,631	Sheep	147,262.00	
505	Goats	1,010.00	
33	Swine	91.00	
54.48	Miles railroad standard gauge	255,509.21	Estimated.
	All other property	147,813.54	
	Total value of all property	$975,058.21	

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Cochise County.

Number.		Valuation.	Per cent. Increased.
43,354	Acres cultivated land	$ 153,686.41	
	Improvements	50,510.00	
56,031	Acres land grants	263,979.30	
	Improvements	2,000.00	
634	Patented mines	3,508,295.52	1500
	Patented Mines, improvements	173,947.01	
	Unpatented mines, improvements	9,900.00	1000
	Town and city lots	1,226,697.69	
	Improvements	1,569,243.60	
1,501	Horses, Range	15,010.00	
1,505	Work	60,200.00	10
1,337	Saddle	26,740.00	31
14	Stallions	1,400.00	
145	Mules	5,363.00	
54	Asses	200.00	
32,575	Cattle, Range and Stock	325,750.00	
191	Beef	3,145.00	
707	Milch cows	20,760.00	
408	Bulls	23,800.00	
200	Sheep	375.00	
4,176	Goats	8,365.00	
272	Swine	724.00	
231.05	Miles railroad standard	1,157,459.24	

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24/47	Miles side track	61,175.00	
	Improvements, railronds	265,083.67	
	All other property	3,215,653.87	
	Total value of all property	$12,209,563.31	

Coconino County.

Number.		Valuation.	Per cent. Increased.
40,620	Acres cultivated land	$ 144,280.00	
	Improvements	25,025.00	
118,650	Acres railroad lands	593,531.16	
285,084	Acres land grants	70,870.50	
	Improvements	1,700.00	
8	Patented mines	5,800.00	
	Improvements	5,050.00	
	Town and city lots	141,148.00	
	Improvements	330,985.00	
1,858	Horses, Range	18,580.00	
723	Work	28,920.00	
783	Saddle	19,573.00	
3	Stallions	300.00	
16	Mules	560.00	17
250	Asses	1,250.00	
33,032	Cattle, Range and stock	341,881.20	
172	Milk Cows	4,300.00	
27	Bulls	1,520.00	
143,929	Sheep	287,858.00	
35			
750	Goats	1,500.00	
62	Swine	310.00	
25	Miles railroad standard	36,758.00	
108.37	Miles railroad standard	632,176.00	Estimated.
	All other property	1,124,346.08	
	Total value of all property	$3,794,261.94	

Gila County.

Number.		Valuation.	Per cent. Increased.
5,229	Acres cultivated land	$ 23,220.00	
	Improvements	11,715.00	
67	Patented mines	1,226,500.00	400
	Patented mines, improvements	392,620.00	
	Unpatented mines improvements	55,680.00	
	Town and city lots	219,850.00	
	Improvements	287,460.00	
822	Horses, Range	8,220.00	
657	Work	26,280.00	50
1,365	Saddle	27,305.00	
9	Stallions	405.00	
578	Mules	20,230.00	40
240	Asses	1,200.00	
34,181	Cattle, Range and Stock	341,810.00	
972	Milch Cows	2,430.00	
7	Bulls	175.00	
120	Sheep	240.00	
36			
21,138	Goats	42,275.00	
342	Swine	1,032.00	
32.24	Miles railroad standard	88,660.00	
	All other property	413,890.28	
	Total value of all property	$ 3,194,198.28	

Graham County.

Number.		Valuation.	Per cent. Increased.
55,191	Acres cultivated land	$ 489,897.25	
	Improvements	378,566.40	
25	Acres railroad land	500.00	
234	Patented mines	2,697,663.30	400
	Improvements	688,730.00	
	Town and city lots	110,143.50	
	Improvements	241,033.00	
1,031	Horses, Range	10,310.00	
1,196	Work	47,840.00	
1,997	Saddle	49,925.00	
6	Stallions	790.00	
169	Mules	6,760.00	
92	Asses	920.00	
40,528	Cattle, Range and Stock	405,280.00	
27	Cattle Beef	270.00	
842	Milch cows	21,050.00	
32	Bulls	660.00	
510	Sheep	1,020.00	
37			
12,471	Goats	24,942.00	
346	Swine	1,038.00	
124.96	Miles railroad standard	425,969.00	
1	Miles side track standard	1,000.00	
26	Miles narrow guage	67,050.00	
	All other property	762,998.63	
	Improvements railroads	59,025.35	
5	Miles Narrow Guage side track	9,000.00	
	Total value of all property	$ 6,502,381.43	

Maricopa County.

Number.		Valuation.	Increased Per cent.
293,388	Acres Cultivated Land	$ 3,569,977.00	
	Improvements	482,725.00	
14	Patented Mines	7,000.00	
	Improvements	5,250.00	
	Improvements, Unpatented Mines	11,500.00	
	Town and City Lots	2,397,790.00	
	Improvements	1,874,185.00	
1,807	Horses, Range	18,070.00	
3,560	Work	142,400.00	60
1,103	Ostriches	55,150.00	
25	Horses, Stallions	2,625.00	
267	Mules	9,345.00	29
10	Asses	820.00	
17,843	Cattle, Range and Stock	178,430.00	
2,625	Calves	13,375.00	
38			
5,696	Cattle, Milch Cows	142,400.00	
318	Bulls	8,135.00	
4,615	Sheep	9,230.00	
1,608	Goats	2,410.00	
3,817	Swine	8,533.00	
97.19	Miles Railroad Standard	647,436.11	
	All other property	1,279,649.19	
	Less exemptions $228,015.00		
	Total value of all property	$10,638,420.30	

Mohave County.

Number.		Valuation.	Increased Per cent.
1,070.5	Acres Cultivated Land	$ 3,915.00	
	Improvements	97,824.00	
42,445.03	Acres Railroad Land	8,489.00	
133	Patented Mines	746,375.00	400
	Improvements Patented Mines	120,217.00	
	" Unpatented Mines	25,980.00	
	Town and City Lots	36,792.00	
	" " " " Improvements	76,290.00	
674	Horses Range	13,480.00	
326	Work	16,300.00	
508	Saddle	17,780.00	
1	Stallion	50.00	
6	Mules	210.00	1
36	Asses	210.00	
9,324	Cattle, Range and Stock	93,240.00	
110	Milch Cows	2,750.00	22
8,125	Sheep	16,250.00	
1,350	Goats	2,700.00	
42	Swine	210.00	
107.881	Miles Railroad Standard	471,979.38	Estimated.
	All other property	96,110.80	
	Less Widows' Exemptions $11,326.		
	Total Value of all property	$ 1,835,826.18	

Navajo County.

Number.		Valuation.	Per cent. Increased.
2,382	Acres cultivated land	39,196.50	
	Improvements	13,859.00	
9034.54	Acres Uncultivated Land	17,955.58	
721108.57	Acres Railroad land	144,217.72	
336925.99	Acres Land Grants	67,385.19	
	Improvements	1,000.00	
	Town and City Lots	86,795.46	
	Improvements	199,126.75	
1,230	Horses, Range	12,300.00	
498	Work	19,920.00	1
502	Saddle	10,680.00	
6	Stallions	550.00	
7	Mules	245.00	100
131	Asses	655.00	
6,354	Cattle, Range and Stock	76,248.00	
418	Milch Cows	10,420.00	24
9	Bulls	205.00	
74,185	Sheep	148,370.00	
425	Goats	850.00	
206	Swine	808.00	
57.155	Miles Railroad Standard *guage*	263,200.00	Estimated.
	All other property	281,519.94	
44,638.96	Forest Reserves	111,596.90	
	Total value of all property	$1,507,104.04	

Pima County.

Number.		Valuation.	Per cent. Increased.
	Acres Land	99,252.00	
	Improvements	48,195.00	
75,524	Acres Uncultivated Land	298,233.00	
	Improvements	15,731.00	
17,208	Acres Land Grants	12,906.00	
	Improvements	1,500.00	
288	Patented Mines	629,142.00	500
	Improvements on Patented Mines	6,150.00	
	Town and City Lots	1,066,897.33	33 1/3
	Improvements	1,351,026.00	
398	Horses, Range	4,025.00	
728	Work	29,120.00	66
503	Saddle	10,060.00	
11	Stallions	430.00	
41			
79	Mules	2,765.00	40
20,685	Cattle, Range and Stock	206,940.00	
360	Milch Cows	6,500.00	6
2,250	Sheep	4,500.00	
757	Brood Mares	7,570.00	
64.75	Miles Railroad, Standard gauge	461,345.00	
	All other property	773,928.00	
	Pullman	5,008.00	
	Total value of all property	$ 5,041,223.33	

Pinal County.

Number.		Valuation.	Per cent. Increased.
	Improvements cultivated lands	53,571.00	
5530474	Acres cultivated land	$ 391,417.25	
72	Patented Mines	69,600.00	
	Improvements on Patented Mines	41,225.00	
	" " Unpatented Mines	53,311.00	
1386	Town and City Lots	36,560.50	
	Improvements	61,455.00	
799	Horses, Range	7,990.00	60
552	Work	22,080.00	66
510	Saddle	10,200.00	12
7	Stallions	450.00	
90	Mules	3,150.00	52
76	Asses	510.00	
13445	Cattle, Range and Stock	161,893.00	
42			
2,500	Sheep	5,000.00	
2,055	Goats	4,110.00	
398	Swine	1,133.00	
88.28	Miles Railroad, Standard gauge	478,517.62	
	All other property	32,991.38	
	Total value of all property	$1,435,164.75	

Santa Cruz County.

Number.		Valuation.	Per cent. Increased.
13,617	Acres Cultivated Land	$ 35,572.00	
	Improvements	57,600.00	
45,235	Acres Land Grants	65,613.30	
	Improvements	10,000.00	
50	Patented Mines	381,150.00	500
	Improvements on Patented Mines	4,500.00	
	" " Unpatented Mines	29,500.00	
	Town and City Lots	207,621.00	
	Improvements	273,340.00	
1429	Horses, Range	14,295.00	
396	Work	15,840.00	60
632	Saddle	12,735.00	
10	Stallions	385.00	
82	Mules	2,870.00	60
166	Asses	599.00	
23,036	Cattle, Range and Stock	230,360.00	
98	Milch Cows	2,617.00	
280	Bulls	5,435.00	
43			
84	Swine	289.00	
52.4	Miles Railroad, standard gauge	222,689.85	
	All other property	300,565.02	
	Total value of all property	$1,873,576.17	

Yavapai County.

Number.		Valuation.	Increased Per cent.
138,636.46	Acres cultivated land	$ 199,414.04	
	Improvements	119,975.00	
210,689.76	Acres railroad land	46,503.46	
99,445.20	Acres land grants	49,722.51	
	Improvements	3,000.00	
1,224	Patented mines	2,238,028.48	100
	Patented mines, improvements	970,735.00	
	Unpatented mines, improvements	176,760.00	
	Town and city lots	528,256.50	
	Improvements	908,605.00	
1,838	Horses, Range	18,380.00	17
1,783	Work	71,320.00	50
1,152	Saddle	29,415.00	
8	Stallions	475.00	
222	Mules	7,770.00	50
240	Asses	1,490.00	
27,395	Cattle, Range and stock	273,950.00	
60	Beef	700.00	
640	Milch Cows	16,000.00	1/2
13	Bulls	350.00	
44			
29,147	Sheep	58,294.00	
17,670	Goats	35,340.00	
648	Swine	1,925.00	
60.558	Miles railroad, standard	264,941.25	
27.3	Miles railroad, narrow	110,000.00	
	All other property	$1,218,963.85	
	Total value of all property	$7,350,314.09	

Yuma County.

Number.		Valuation.	Increased Per cent.
58,285	Acres cultivated land	$ 244,527.00	
	Improvements	7,090.00	
52	Patented mines	72,012.00	500
	Improvements	14,870.00	
	Improvements and unpatented mines	10,198.00	
	Town and city lots	236,305.50	
	Improvements	114,935.00	
187	Horses, Range	2,057.00	
1,008	Work	40,320.00	60
20	Saddle	500.00	25
2	Stallions	175.00	
116	Mules	4,060.00	40
1,650	Cattle, Range and stock	18,150.00	
5	Beef	70.00	
199	Milch cows	4,975.00	25
3	Bulls	46.00	
724	Swine	2,172.00	
45			
82.5	Miles railroad, standard	587,816.28	
	Pullman	6,381.30	
	All other property	166,884.38	
	Private car lines	29,736.35	
	Total value of property	$1,563,280.81	

SCHEDULE B.

Counties.	Valuation.
Apache	$ 975,058.21
Cochise	12,209,563.31
Coconino	3,794,261.94
Gila	3,194,198.28
Graham	6,502,381.43
Maricopa	10,866,435.30
Mohave	1,847,152.18
Navajo	1,507,104.04
Pima	5,041,223.33
Pinal	1,435,164.75
Santa Cruz	1,873,576.17
Yavapai	7,350,314.09
Yuma	1,563,280.81
Total valuation	$58,159,713.84
Less exemptions	239,341.00
Total subject to taxation	$57,920,372.84

46

SCHEDULE C.

Statement of the Aggregate Amount of Taxation of Each Object in the Territory for the Year 1905.

9,194,849.46 acres cultivated land	$ 5,420,263.45
Improvements	1,353,370.40
181,096.54 acres uncultivated land	361,843.33
Improvements	24,813.50
1,881,440.73 acres railroad land	926,945.80
Improvements	19,200.00
Patented mines	11,641,566.30
Patented mines, improvements	2,426,294.01
Unpatented mines, improvements	372,829.00
Town and city lots	6,307,334.48
Improvements	7,328,125.10
15,260 horses, range	159,577.00
13,367 horses, work	537,940.00
9,762 horses, saddle	223,973.00
104 stallions	8,160.00
1,820 mules	64,833.00
1,421 asses	8,866.00
266,064 cattle, range and stock	2,726,124.20
283 cattle, beef	4,185.00
10,409 milch cows	241,577.00
1,098 bulls	40,326.00
339,212 sheep	678,399.00
62,148 goats	123,503.00
47 6,974 swine	$ 18,265.00
1,187.214 miles railroad standard guage	5,994,456.94
53.3 miles railroad, narrow guage	177,050.00
1,103 ostriches	55,150.00
All other property	9,926,911.86
2,675 calves	13,375.00
Other railroad property	374,234.67
757 brood mares	7,570.00
50.47 sidetrack	62,175.00
Total	$58,159,713.84
Less exemptions	239,341.00
	$57,920,372.84

SCHEDULE D.

Final Valuation Placed on Railroad Property for the Year 1905.

Name.	No. miles.	Rate.	Valuation.
So. Pac.	392.5	7,125.045	$2,796,580.35
E. P. & S. W.	86.3	6,750.000	582,525.00
M. & P. S. R. V.	34.93	4,970.000	173,618.87
A. & N. M.	40.00	5,504.500	220,180.00
N. M. & A.	87.80	4,249.800	373,133.00
Morenci Southern	18.00	3,655.550	65,800.00
Central Arizona	11.00	2,000.000	22,000.00
Sagina- & Manistee	14.00	1,054.166	14,758.32
G. V. G. & N.	124.30	3,128.700	388,897.40
U. V. & P.	27.30	4,029.304	110,000.00
Arizona Copper Co.	8.00	2,500.000	20,000.00
	843.13		$4,767,492.94
A. T. & S. F.	386.734		1,873,246.25
Pullman			105,413.04
	1,230.864		$6,746,152.23

48 Mr. Walter Bennett appeared before the Board relative to the assessment of the Associated Oil Company.

Upon motion duly put and carried, it was ordered that the assessment of the Armour Car Lines be reduced from 1,000 cars to 95 cars, and the valuation from $500. per car to $400.; that the Continental Fruit Express company be reduced from 75 cars to 7½ cars, and the valuation from $500 per car to $400 per car, and the Associated Oil Company be reduced from 80 cars to 15 cars at a valuation of $400 per car.

The Board then adjourned until 10 o'clock A. M., August 18, 1905.

WESLEY A. HILL, *Chairman.*

Attest:

FRED A. TRITLE, *Secretary.*

Office of the Territorial Board of Equalization.

PHŒNIX, ARIZONA, *August* 18, 1905.

The board met pursuant to adjournment at 10 o'clock all members present.

The minutes of August 17, 1905, were read and approved.

The Board took under discussion the matter of new abstract for next year, and it was ordered that the abstract for 1906 be as follows:

Acres cultivated land, irrigated.
Improvements.
49 Acres cultivated land, unirrigated.
Improvements.
Acres uncultivated land, desert.
Improvements.
Acres uncultivated land, forest.
Improvements.
Acres railroad land, uncultivated.
Improvements.
Acres land grants, cultivated.
Improvements.
Acres land grants, uncultivated.
Improvements.
Patented mining claims.
Gold.
Improvements.
Silver.
Improvements.
Lead and silver.
Improvements.
Copper.
Improvements.
Coal.
Improvements.
Unpatented mining claims.
Gold.
Improvements.
50 Silver.
Improvements.

Lead and Silver.
Improvements.
Copper.
Improvements.
Coal.
Improvements.
Mill sites.
Improvements.
Smelter sites.
Improvements.
Smelters.
Hotels.
Telephone lines.
Telegraph lines.
Stores.
Merchandise.
Capital stock, banks, paid up.
Town and City lots.
Improvements.
Horses, Range.
Work.
Saddle.
Stallions.
Brood Mares.
51 Shetland Ponies.
Ostriches.
Mules.
Burros.
Jacks.
Cattle, Range and stock.
Beef.
Milch Cows.
Bulls.
Calves.
Sheep.
Goats.
Swine.
Miles Railroad Standard Guage.
Miles Side Track.
Miles Railroad, Narrow Guage.
Miles Side Track.
Pullman Company.
Other Foreign Car Line Companies.
All other property.

The Board then adjourned until August 19, 1905, at 10 o'clock A. M.

WESLEY A. HILL, *Chairman.*

Attest:

FRED A. TRITLE, *Secretary.*

52 Office of the Territorial Board of Equalization.

PHŒNIX, ARIZONA, *August* 19, 1905.

The Board met pursuant to adjournment at 10 o'clock A. M., all members present.

The minutes of August 18, 1905, were read and approved.

On motion it was

Ordered: That the following Tax Rate be levied in the various counties in the Territory for the purposes of meeting the interest due on their respective debts, funded debts, funded under an Act of Congress by the issuance of 3 per cent. and 5 per cent. Territorial bonds, viz:

Name of County.	Amount of Interest.	Per $100. Valuation.
Apache	$2,173.68	.23
Coconino	7,950.06	.27
Gila	2,239.08	.17
Graham	7,368.24	.15
Maricopa	14,081.62	.15
Mohave	5,268.16	.44
Navajo	1,900.00	.17
Pima	30,060.26	.60
Pinal	6,806.90	.45
Santa Cruz	1,550.00	.11
Yavapai	16,937.00	.32
Yuma	4,439.56	.41
Prescott City	4,563.10	.01
Tombstone City	690.62	.005
Tucson City	1,371.20	.003

On motion the Board then adjourned until Monday, August 21, 1905, at 2 o'clock, P. M.

WESLEY A. HILL, *Chairman.*

Attest:

FRED A. TRITLE, *Secretary.*

53 Office of the Territorial Board of Equalization.

PHŒNIX, ARIZONA, *August* 21, 1905.

The Board met this day pursuant to adjournment at 2 o'clock p. m., all the members present.

The minutes of August 19, 1905, were read and approved.

On motion of Mr. Parker, seconded by Mr. Wilson, the following resolution was adopted, by unanimous vote, viz:

Whereas, it appears to this Board that a large amount of property, real and personal, subject to taxation has been omitted from the assessment rolls of the various counties by the assessors and boards of equalization for the current year, which omissions tend to greatly increase the burden of taxation of those whose property has been fairly returned, therefore, be it

Resolved, That the Chairman of this Board be, and he is hereby instructed to notify the tax collectors of the various counties of such omissions, and to direct them, upon discovering such omitted property, or whenever it may be shown them that certain property has been omitted, to immediately place the same on the assessment roll, and to assess the same and levy and collect taxes thereon, as provided in Paragraph 3896, Revised Statutes of Arizona, 1901.

It was then moved by Mr. Solomon, seconded by Mr. Woods, duly put and carried, that the Chairman pay the following bills

Arizona Gazette, cards	.....	$5.00
B. J. O'Reilly, certified copy	.....	10.00
Postal Tel. Co., telegrams	.....	3.94
Western Union, telegrams	.....	11.88
54 H. H. McNeil Co., supplies	.....	24.50
Wesley A. Hill, chairman, express	.....	4.80
Wesley A. Hill, chairman, postage	.....	20.00
Miss Bohanan, typewriting	.....	10.00

The minutes of this day's meeting were then read, and upon motion, approved as read.

There being no further business to come before the Board at this meeting, upon motion of Mr. Woods, seconded by Mr. Wilson, duly put and carried, the Board stood adjourned.

WESLEY A. HILL, *Chairman.*

Attest:

FRED A. TRITLE, *Secretary.*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona, do hereby certify that the foregoing is a full, true and correct copy of the minutes of the Territorial Board of Equalization, at its August meeting of 1905, as appears of record in a book kept for that purpose in my office.

Given under my hand and seal of office, at Phœnix, Capitol, this 17th day of November, A. D. 1905.

[SEAL.] WESLEY A. HILL.

To the Territorial Board of Equalization:
Below find Abstract of the Assessment Roll of Apache County for the year 1905.

Description of Property.	Number.	Value.	Value Improvements.	Total Value.
Cultivated Land, acres, 8.78	2948	25899.00	6715.00	32614.00
Uncultivated Land, acres, 47.74	95638	45654.75	9082.50	54737.25
Railroad Land, acres, 204	788522.37	157704.46	.....	157704.46
Land Grants, acres				
Patented Mines, number of mines				
Improvements on Patented Mines				
Improvements on Unpatented Mines				
Town and City Lots	313	12477.00	40440.75	52917.75
Horses, Range, 10.00	1686	16860.00	.....	16860.00
Horses, Work, 28.70	435	12485.00	.....	12485.00
Horses, Saddle, 20	453	9060.00	.....	9060 00
Horses, Stallions, 62.50	$2	125.00	.....	125.00
Mules, 25.00	43	1070.00	.....	1070.00
Asses, 7.00	126	882.00	.....	882.00
Cattle, Range and Stock, 12.00	6016	72192.00	.....	72192.00
Cattle, Beef	295	5900.00	.....	5900.00
Cattle, Milch Cows, 20.00				
Cattle, Bulls	73631	147262.00	.....	147262.00
Sheep, 2.00	505	1010.00	.....	1010.00
Goats, 2.00	33	91.00	.....	91.00
Swine, 2.78	54480 mi.	255509.21	.....	255509.21
Railroads, Standard Guage, main line				
Railroads, Standard Guage, side track				
Railroads, Narrow Guage, main line				
Railroads, Narrow Guage, side track	.....	165485.54	.....	165485.54
All Other Property				
Total Value of All Property	.....	.....	.....	$985905.22

56 TERRITORY OF ARIZONA, *County of Apache, ss:*

I, Jesus Serolte, Clerk of the Board of Supervisors of Apache County, Arizona Territory, do hereby certify that the foregoing statement is a full, true and correct abstract of the Original Assessment Roll of Apache County for the fiscal year 1905, as appears upon said Roll now on file in my office.

[SEAL.] JESUS SEROLTE, *Clerk,*
By MANUEL RUIZ, *Deputy.*

NOTE.—This blank is printed in Copying Ink in order that press copies can be taken by Clerks of Boards of Supervisors.

TERRITORY OF ARIZONA, *County of Maricopa, ss:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Apache, Territory of Arizona, to the Territorial Board of Equalization, for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capitol, this 17th day of November, A. D., 1905.

WESLEY A. HILL,
[SEAL.] *Territorial Auditor.*

To the Territorial Board of Equalization:

Below find Abstract of the Assessment Roll of Cochise County for the year 1905:

Description of Property.	Number.	Value.	Value Improvements.	Total Value.
Cultivated Land, acres, } 3.55 Uncultivated Land, acres, }	43,354	153696.41	50520.00	204216.41
Railroad Land, acres				
Land Grants, acres, 4,635	56,931	263979.30	2000.00	265979.30
Patented Mines, number of mines, 351.76	634	223018.47		223018.47
Improvements on Patented Mines			173947.01	173947.01
Improvements on Unpatented Mines	7		900.00	900.00
Town and City Lots	16,869	1226697.69	1569243.60	2795941.29
Horses, Range, $10	1,301	13010.00		13010.00
Horses, Work, $34	1,505	50211.00		50211.00
Horses, Saddle, 15.25	1,337	20390.00		20390.00
Horses, Stallions, 100.00	14	1400.00		1400.00
Mules, 36.98	145	5363.00		5363.00
Asses, 5.37	54	290.00		290.00
Cattle, Range and Stock, $10	32575	325750.00		325750.00
Cattle, Beef, 1646	191	3145.00		3145.00
Cattle, Milch Cows, 29.36	707	20760.00		20760.00
Cattle, Bulls, 58.33⅓	408	23800.00		23800.00
Sheep, 1.87½	200	375.00		375.00
Goats, 2.00	4176	8365.00		8365.00
Swine, 2.66	272	724.00		724.00
Railroads, Standard Guage, main line	231.05	1157459.24	265083.67	1422542.91
Railroads, Standard Guage, side track	2447	61175.00		61175.00
Railroads, Narrow Guage, main line				
Railroads, Narrow Guage, side track				
All Other Property				3321920.02
Total Value of All Property				$8,943,223.41

58 TERRITORY OF ARIZONA, *County of Cochise, ss:*

I, Chas. R. Howe, Clerk of the Board of Supervisors of Cochise County, Arizona Territory, do hereby certify that the foregoing statement is a full, true and correct abstract of the Original Assessment Roll of Cochise County for the fiscal year 1905, as appears upon said Roll now on file in my office.

CHAS. R. HOWE, *Clerk.*

NOTE.—This blank is printed in Copying Ink in order that press copies can be taken by Clerks of Boards of Supervisors.

TERRITORY OF ARIZONA, *County of Maricopa:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Cochise, Territory of Arizona, to the Territorial Board of Equalization, for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capitol, this 17th day of November, A. D., 1905.

WESLEY A. HILL,
Territorial Auditor.

[SEAL.]

Office of the Board of Supervisors, Coconino County, Arizona.

To the Territorial Board of Equalization :

FLAGSTAFF, ARIZ., *July 24th*, 1905.

Below find abstract of the Assessment Roll of Coconino County for the year 1905.

Description of Property.	Number.	Value.	Value Improvements.	Total Value.
Cultivated Land, acres, } 3.55	40620	144280.00	25025.00	169305.00
Uncultivated Land, acres, }	118650	569513.16	1700	571231.16
Railroad Land, acres, Forest reserve 4.80	285084	70870.50	.....	70870.50
Land Grants, acres, .25	8	5800.00	.....	5800.00
Patented Mines, number of mines	.....	5050.00	.....	5050.00
Improvements on Patented Mines				
Improvements on Unpatented Mines	4694	141148.00	330985.00	472133.00
Town and City Lots	1858	18580.00	.....	18580.00
Horses, Range, $10	723	28920.00	.....	28920.00
Horses, Work, 40	783	19575.00	.....	19575.00
Horses, Saddle, 25	3	300.00	.....	300.00
Horses, Stallions, 100	16	480.00	.....	480.00
Mules, 30	258	1290.00	.....	1290.00
Asses, 5	33032	341881.20	.....	341881.20
Cattle, Range and Stock, 10.35				
Cattle, Beef	172	4300.00	.....	4300.00
Cattle, Milch Cows, 25	27	1520.00	.....	1520.00
Cattle, Bulls, 56.30	143929	287858.00	.....	287858.00
Sheep, 2	750	1500.00	.....	1500.00
Goats, 2	62	310 00	.....	310.00
Swine, 5	25 mi.	36758.00	.....	36758.00
Railroads, Standard Guage, Log line	108.370	632176.00	.....	632176.00
Railroads, Standard Guage, Santa Fe				
Railroads, Narrow Guage, main line				
Railroads, Narrow Guage, side track	.....	1158968.08	.....	1158968.08
All Other Property		3466045.94	362760.00	
Total Value of All Property	.....	.....	.....	$3,828,805.94

60 TERRITORY OF ARIZONA, *County of Coconino, ss:*

I, Harry C. Hibben, Clerk of the Board of Supervisors of Coconino County, Arizona Territory, do hereby certify that the foregoing statement is a full, true and correct abstract of the Original Assessment Roll of Coconino County for the fiscal year 1905, as appears upon said Roll now on file in my office.

[SEAL.] HARRY C. HIBBEN, *Clerk.*

NOTE.—This blank is printed in Copying Ink in order that press copies can be taken by Clerks of Boards of Supervisors.

TERRITORY OF ARIZONA, *County of Maricopa:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Coconino, Territory of Arizona, to the Territorial Board of Equalization, for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capitol, this 17th day of November, A. D., 1905.

WESLEY A. HILL,

[SEAL.] *Territorial Auditor.*

Office of the Board of Supervisors, Gila County, Arizona.

To the Territorial Board of Equalization:

Below find Abstract of the Assessment Roll of Gila County for the year 1905.

GLOBE, ARIZ., *July 28th*, 1905.

Description of Property.	Number.	Value.	Value Improvements.	Total Value.
Cultivated Land, acres, 4.44	5229	23220.00	11715.00	34935.00
Uncultivated Land, acres				
Railroad Land, acres				
Land Grants, acres				
Patented Mines, number of mines	67	245300.00	395620.00	640920.00
Improvements on Patented Mines				
Improvements on Unpatented Mines			55680	55680.00
Town and City Lots		219850.00	287460.00	507310.00
Horses, Range, $10	822	8220.00		8220.00
Horses, work, 25	657	16435.00		16435.00
Horses, saddle, 20	1365	27305.00		27305.00
Horses, Stallions, 45	9	405.00		405.00
Mules, 25	578	14455.00		14455 00
Asses, 5	240	1200 00		1200.00
Cattle, Range and Stock, 10	34181	341810.00		341810.00
Cattle, Beef				
Cattle, Milch Cows, 25	972	2430.00		2430.00
Cattle, Bulls, 25	7	175 00		175.00
Sheep, 2	120	240.00		240.00
Goats, 2	21138	42276.00		42276.00
Swine, 3	343	1032.00		1032.00
Railroads, Standard Guage, main line	32.24 miles.			88660.00
Railroads, Standard Guage, side track				
Railroads, Narrow Guage, main line				
Railroads, Narrow Guage, side track				
All Other Property		413890.28		413890.28
		1446903 28	750475.00	
Total Value of all Property				$2,197,378.28

62 TERRITORY OF ARIZONA, *County of Gila, ss:*

I, W. D. Fisk, Clerk of the Board of Supervisors of Gila County, Arizona Territory, do hereby certify that the foregoing statement is a full, true and correct abstract of the Original Assessment Roll of Gila County for the fiscal year 1905, as appears upon said Roll now on file in my office.

[SEAL.] W. D. FISK, *Clerk.*

NOTE.—This blank is printed in Copying Ink in order that press copies can be taken by Clerks of Boards of Supervisors.

TERRITORY OF ARIZONA, *County of Maricopa:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona, do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Gila, Territory of Arizona, to the Territorial Board of Equalization, for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capitol, this 17th day of November, A. D., 1905.

WESLEY A. HILL,

[SEAL.] *Territorial Auditor.*

Office of the Board of Supervisors, Graham County, Arizona.

SOLOMONVILLE, A. T., *July 27th*, 1905.

To the Territorial Board of Equalization:

Below find Abstract of the Assessment Roll of Graham County for the year 1905.

Description of Property.	Number.	Value.	Value Improvements.	Total Value.
Cultivated Land, acres .. / Uncultivated land, acres. } 8.87	55,191	489,897.25	378,566.40	868,463.65
Railroad Land, acres, 20.00	25	500.00	.....	500.00
Land Grants, acres				
Patented Mines, number of mines	234	2,322,198.66	..... }	
Improvements on Patented Mines	.. ..	.....	688,730.00 }	3,010,928.66
Improvements on Unpatented Mines				
Town and City Lots	.....	110,143.50	241,033.00	351,176.50
Horses, Range, 10.00	1,031	10,310.00	.....	10,310.00
Horses, Work, 40.00	1,196	47,840.00	.....	47,840.00
Horses, Saddle, 25.00	1,997	49,925.00	.....	49,925.00
Horses, Stallions, 165.00	6	790.00	....	790.00
Mules, 40.00	16	6,760.00	....	6,760.00
Asses, 10.00	92	920.00	.....	920.00
Cattle, Range and Stock, 10.00	40,528	405,280.00	.....	405,280.00
Cattle, Beef, 10.00	27	270.00	.....	270.00
Cattle, Milch Cows, 25.00	842	21,050.00	....	21,050.00
Cattle, Bulls, 20.00	33	660.00	....	660.00
Sheep, 2.00	510	1,020.00	.....	1,020.00
Goats, 2.00	12,471	24,942.00	.....	24,942.00
Swine, 3.00	346	1,038.00	.....	1,038.00
Railroads, Standard Guage, main line	124.96	425,969.00	59,025.35	484,994.35
Railroads, Standard Guage, side track	1	1,000.00	.....	1,000 00
Railroads, Narrow Guage, main line	26	74,000.00	11,800.00	85,800.00
Railroads, Narrow Guage, side track, 20"	5	9,000.00	.....	9,000.00
All other property	.....	762,998.63	.....	72,998.63
Total Value of all Property	.....	.....	.....	$6,145,666.79

64 TERRITORY OF ARIZONA, *County of Graham, ss:*

I, Geo. Carlton, Clerk of the Board of Supervisors of Graham County, Arizona Territory, do hereby certify that the foregoing statement is a full, true and correct abstract of the Original Assessment Roll of Graham County for the fiscal year 1905, as appears upon said Roll now on file in my office.

[SEAL.] GEO. CARLTON, *Clerk.*

NOTE.—This blank is printed in Copying Ink in order that press copies can be taken by Clerks of Boards of Supervisors.

TERRITORY OF ARIZONA, *County of Maricopa, ss:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Graham, Territory of Arizona, to the Territorial Board of Equalization, for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capitol, this 17th day of November, A. D., 1905.

WESLEY A. HILL,

[SEAL.] *Territorial Auditor.*

1,228,262.66

Recapitulation.

Amount of Assessment Roll as returned by Assessor..	$6,145,666.79
" " added by Board, July meeting.	86,757.00
	$6,232,423.79

Reductions by Board at July Meeting.

Ariz. Copper Co. 8 miles 20" gauge R. R. double assessment.....	$18,750.00	
Reduced Mining Companies.....	1,782,666.00	
Other reductions	9,805.00	
		$1,811,221.00
Amount of Assessment Roll, proper should be.....		$4,334.445.79

2,322,198.66
1,782,666.

$539,532.66 Valuation of Pat. Mines.

Office of the Board of Supervisors, Maricopa County, Arizona.

To the Territorial Board of Equalization:

PHŒNIX, *Aug.* 1, 1905.

Below find Abstract of the Assessment Roll of Maricopa County for the Year 1905:

Description of Property.	Number.	Value.	Value Improvements.	Total Value.
Cultivated Land, acres, 12.13	293388	3569977.00	482725.00	4052702.00
Uncultivated Land, acres				
Railroad Land, acres				
Land Grants, acres				
Patented Mines, number of mines	14			7000.00
Improvements on Patented Mines				5250 00
Improvements on Unpatented Mines				11500.00
Town and City Lots		2397790.00	1874185.00	4271975.00
Horses, Range, 10.00	1807			18070.00
Horses, Work, 25.00	3560			89000.00
Ostriches, 50.00	1103			55150.00
Horses, Stallions, 105.00	25			2625 00
Mules, 27.00	267			7225.00
Asses, 82.00	10			820.00
Cattle, Range and Stock, 10.00	17843			178430.00
Cattle, Calves, 5.00	12675			13375.00
Cattle, Milch Cows, 25.00	5696			142400.00
Cattle, Bulls, 25.59	318			8135.00
Sheep, 2.00	4615			9230 00
Goats, 1.49	1608			2410.00
Swine, 2.23	3817			8533.00
Railroads, Standard Gauge, main line, miles	97.19			647436.11
Railroads, Standard Gauge, side track				
Railroads, Narrow Gauge, main line				
Railroads, Narrow Gauge, side track				
All Other Property				1352411.89
				10883678 00
Less exemptions, Churches		96585.00		228005.00
" " Widows		131430.00		
Total Value of All Property				$10655673.00

66 TERRITORY OF ARIZONA, *County of Maricopa, ss:*

I, W. G. Pendleton, Clerk of the Board of Supervisors of Maricopa County, Arizona Territory, do hereby certify that the foregoing statement is a full, true and correct abstract of the Original Assessment Roll of Maricopa County for the fiscal year 1905, as appears upon said Roll now on file in my office.

W. G. PENDLETON, *Clerk.*

NOTE.—This blank is printed in Copying Ink in order that press copies can be taken by Clerks of Boards of Supervisors.

TERRITORY OF ARIZONA, *County of Maricopa:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona, do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Maricopa, Territory of Arizona, to the Territorial Board of Equalization, for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capitol, this 17th day of November, A. D., 1905.

WESLEY A. HILL,
Territorial Auditor.

67 Office of the Board of Supervisors, Mohave County, Arizona.

To the Territorial Board of Equalization:

KINGMAN, *Aug. 7th*, 1905.

Below find Abstract of the Assessment Roll of Mohave County for the Year 1905.

Description of Property.	Number.	Value.	Value Improvements.	Total Value.
Land, acres, 3.65	1070.5	3915.00	97824 00	101739.00
Uncultivated Land, acres	42445.03	8489.00	.....	8489.00
Railroad Land, acres, .20				
Land Grants, acres	2660.762	149275.00	.....	149275.00
Patented Mines, number of acres	.....	.....	120217.00	120217.00
Improvements on Patented Mines	.....	.....	25980.00	25980.00
Improvements on Unpatented Mines	723	36792.00	76290.00	113082.00
Town and City Lots	674	13480.00	.....	13480.00
Horses, Range, 20	326	16300.00	.....	16300.00
Horses, Work, 50	508	17780.00	.....	17780 00
Horses, Saddle, 25	1	50.00	.....	50.00
Horses, Stallions, 50	6	195.00	.....	195.00
Mules, 32.50	36	210.00	.....	210.00
Asses, 6	9324	93240.00	.....	93240.00
Cattle, Range and Stock, 10				
Cattle, Beef	110	2250.00	.....	2250.00
Cattle, Milch Cows, 20.45				
Cattle, Bulls	8125	16250.00	.....	16250.00
Sheep, 2	1350	2700.00	.....	2700.
Goats, 2	42	210.00	.....	210.00
Swine, 5	107.881	471997.38	.....	471979.38
Railroads, Standard Gauge, main line, mi				
Railroads, Standard Gauge, side track				
Railroads, Narrow Gauge, main line				
Railroads, Narrow Gauge, side track				
All Other Property	.....	.....	.....	131119.84
Total Value of All Property	.....	.....	.....	$1,271,066.22
Widows' Exemptions	.....	.....	.....	11,326.00
				1,259,740.22

68 TERRITORY OF ARIZONA, *County of Mohave, ss:*

I, Thos. McNeely, Clerk of the Board of Supervisors of Mohave County, Arizona Territory, do hereby certify that the foregoing statement is a full, true and correct abstract of the Original Assessment Roll of Mohave County for the fiscal year 1905, as appears upon said Roll now on file in my office.

[SEAL.] THOS. McNEELY, *Clerk.*

NOTE.—This blank is printed in Copying Ink in order that press copies can be taken by Clerks of Boards of Supervisors.

TERRITORY OF ARIZONA, *County of Maricopa, ss:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Mohave, Territory of Arizona, to the Territorial Board of Equalization, for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capital, this 17th day of November, A. D., 1905.

WESLEY A. HILL,

[SEAL.] *Territorial Auditor.*

Office of the Board of Supervisors, Navajo County, Arizona.

To the Territorial Board of Equalization:

Below find Abstract of the Assessment Roll of Navajo County for the year 1905:

Holbrook, Ariz., *July 22d*, 1905.

Description of Property.	Number.	Value.	Value Improvements	Total Value.
Cultivated Land, acres $5 to $25	2,382	39196.50	13859.00	
Uncultivated Land, acres $1 to 2.50	9,934.54	17958.58		71011.08
Railroad Land, acres 20 cts	721,108.57	144217.72		144217.72
Land Grants, acres 20c. A. L. & C. Co.	336,925.99	67385.19	1000.00	68385.19
Patented Mines, number of mines				
Improvements on Patented Mines				
Improvements on Unpatented Mines				
Town and City Lots		86795.46	199126.75	285922.21
Horses, Range, $10	1,230	12300.00		12300.00
Horses, Work, $30 to $40 $36.50	498	18190.00		18190.00
Horses, Saddle, $20 to $25 $20.40	502	10680.00		10680.00
Horses, Stallions, $75 to $100 91.66	6	550.00		550.00
Mules, 15.55	7	110.00		110.00
Asses, $5	131	655.00		655.00
Cattle, Range and Stock, $12	6,354	76248.00		76248.00
Cattle, Beef				
Cattle, Milch Cows, $20	418	8360.00		8360.00
Cattle, Bulls, $22.77	9	205.00		205.00
Sheep, $2	74,185	148370.00		148370.00
Goats, "	425	850.00		850.00
Swine, $3 to $5	206	808.00		808.00
Railroads, Standard Guage, main line	57-155 mi.	263200.00		263200.00
Railroads, Standard Guage, side track				
Railroads, Narrow Guage, main line			Estimated value on $175 per mile on License Tax.	300065.94
Railroads, Narrow Guage, side track				
All Other Property				
Additional assessments to the Aztec Land & Cattle Co. lands in the Black Mesa Forest Reserve, $2.50 per acre	44,638.96	111596.90		111596.90
Total Value of All Property				$1,521725.04

COPPER QUEEN CONSOLIDATED MINING CO. VS.

70 TERRITORY OF ARIZONA, *County of Navajo, ss:*

I, A. F. McAllister Clerk of the Board of Supervisors of Navajo County, Arizona Territory, do hereby certify that the foregoing statement is a full, true and correct abstract of the Original Assessment Roll of Navajo County for the fiscal year 1905, as appears upon said Roll now on file in my office.

[SEAL.] A. F. McALLISTER, *Clerk.*

NOTE.—The totals of the foregoing abstract are subject to corrections to be made by the County Board of Equalization at final meeting Aug. 21 ensuing.

A. F. McALISTER,
Clerk of the Board.

TERRITORY OF ARIZONA, *County of Maricopa, ss:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona, do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Navajo, Territory of Arizona, to the Territorial Board of Equalization, for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capitol, this 17th day of November, A. D. 1905.

WESLEY A. HILL,
[SEAL.] *Territorial Auditor.*

Office of the Board of Supervisors, Pima County, Arizona.

To the Territorial Board of Equalization:

Tucson, A. T, *August 2nd*, 1905.

Below find Abstract of the Assessment Roll of Pima County for the year 1905.

Description of Property.	Number.	Value.	Value Improvements.	Total Value.
Cultivated Land, acres				
Uncultivated Land, acres, 3.95	75524	298233.00	15731.00	313964.00
Addition to City of Tucson		99252.00	48195.00	147447.00
Land Grants, acres, 75c.	17208	12906.00	1500.00	14406.00
Patented Mines, number of mines, 364.08	288	104857.00		104857.00
Improvements on Patented Mines			6150.00	6150.00
Improvements on Unpatented Mines				
Town and City Lots		800173.00	1351026.00	2151199.00
Horses, Range, 10.11	398	4025.00		4025.00
Horses, Work, 24	728	17480.00		17480.00
Horses, Saddle, 20	503	10060.00		10060.00
Horses, Stallions, 39.09	11	430.00		430.00
Mules, 24.93	79	1970.00		1970.00
Cattle, Range & Stock, $10	20685	206940.00		206940.00
Cattle, Range and Stock				
Cattle, Beef				
Cattle, Milch Cows, 23.48	260	6105.00		6105.00
Cattle, Bulls, Included in stock cattle				
Sheep, $2.00	2250	4500.00		4500.00
Goats, Brood Mares $10	757	7570.00		7570.00
Swine				
Railroads, Standard Guage, main line	64.75 mls.	362672.00	98673.00	461345.00
Railroads, Standard Guage, side track				
Railroads, Narrow Guage, main line				
Railroads, Narrow Guage, side track				
All Other Property		838755.00		838755.00
Pullman Company		5008.00		5008.00
		2780936.00	1521275.00	
Total Value of all Property				$4302211.00

72 TERRITORY OF ARIZONA, *County of Pima, ss:*

I, John Mets, Clerk of the Board of Supervisors of Pima County, Arizona Territory, do hereby certify that the foregoing statement is a full, true and correct abstract of the Original Assessment Roll of Pima County for the fiscal year 1905, as appears upon said Roll now on file in my office.

[SEAL.] JOHN METS, *Clerk.*

TERRITORY OF ARIZONA, *County of Maricopa, ss:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona, do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Pima, Territory of Arizona, to the Territorial Board of Equalization, for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capital, this 17th day of November, A. D. 1905.

WESLEY A. HILL,

[SEAL.] *Territorial Auditor.*

FLORENCE, *July* 25, 1905.

To the Territorial Board of Equalization:

Below find Abstract of the Assessment Roll of Pinal County for the year 1905.

Description of Property.	Number.	Value.	Value Improv.-ments.	Total Value.
Cultivated Land, acres .. } 708 Uncultivated Land, acres. }	5530474	391417.25	53571.00	444988.25
Railroad Land, acres				
Land Grants, acres				
Patented Mines, number of mines	72	66100.00	3500.00	69600.00
Improvements on Patented Mines			41225.00	41225.00
Improvements on Unpatented Mines			55311.00	55311.00
Town and City Lots	1386	36560.50	61455.00	98015.50
Horses, Range, 6.72	799	5372.50		5372.50
Horses, Work, 24.40	552	13475.00		13475.00
Horses, Saddle, 17.81	510	8085.00		8085.00
Horses, Stallions, 64.28	7	450.00		450.00
Mules, 23.11	90	2080.00		2080.00
Asses, 6.71	76	510.00		510.00
Cattle, Range and Stock } Cattle, Beef } All kinds $12 Cattle, Milch Cows } Cattle, Bulls }	13445	161893.00		161893.00
Sheep	2500	5000.00		5000.00
Goats	2055	4110.00		4110.00
Swine	398	1133.00		1133.00
Railroads, Standard Guage, main line	80.28	439672.93	38844.69	478517.62
Railroads, Standard Guage, side track				
Railroads, Narrow Guage, main line				
Railroads, Narrow Guage, side track, Rolling Stock		70314.50		70314.50
All Other Property		102209.88		102209.88
Total Value of all Property				$1562290.25

74 TERRITORY OF ARIZONA, *County of Pinal, ss:*

I, R. B. Devine, Clerk of the Board of Supervisors of Pinal County, Arizona Territory, do hereby certify that the foregoing statement is a full, true and correct abstract of the Original Assessment Roll of Pinal County for the fiscal year 1905 as appears upon said Roll now on file in my office.

E. B. DEVINE, *Clerk.*

TERRITORY OF ARIZONA, *County of Maricopa:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona, do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Pinal, Territory of Arizona, to the Territorial Board of Equalization, for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capitol, this 17th day of November, A. D. 1905.

WESLEY A. HILL,
Territorial Auditor.

[SEAL.]

Office of the Board of Supervisors, Santa Cruz County, Arizona.

To the Territorial Board of Equalization:

NOGALES, ARIZONA, *July* 29, 1905.

Below find abstract of the Assessment Roll of Santa Cruz County for the year 1905.

Description of Property.	Number.	Value.	Value Improvements.	Total Value.
Cultivated Land, acres				
Uncultivated Land, acres, $2.61	13617	35573	57600	93173
Railroad Land, acres				
Land Grants, acres, 1.23	45235	65614.30	10000	75614.30
Patented Mines, number of mines, $1270.50	50	63525		63525.30
Improvements on Patented Mines			4500	4500
Improvements on Unpatented Mines			29500	29500
Town and City Lots		207621	273340	480961
Horses, Range, 10.00	1429	14295		14295
Horses, Work, 25.00	396	9980		9980
Horses, Saddle, 20.00	632	12735		12735
Horses, Stallions, 38.50	10	385		385
Mules, 25.00	82	2060		2060
Asses, 3.00	166	599		599
Cattle, Range and Stock, 10.00	23036	230360		230360
Cattle, Beef				
Cattle, Milch Cows, 26.70	98	2617		2617
Cattle, Bulls, 19.41	280	5435		5435
Sheep				
Goats				
Swine, 3.44	84	289		289
Railroads, Standard Guage, main line	52.4 miles			222689.85
Railroads, Standard Guage, side track				
Railroads, Narrow Guage, main line				
Railroads, Narrow Guage, side track				
All other property				300565.02
Total Value of All Property				$1549283.17

76 TERRITORY OF ARIZONA, *County of Santa Cruz, ss:*

I, Phil Herold, Clerk of the Board of Supervisors of Santa Cruz County, Arizona Territory, do hereby certify that the foregoing statement is a full, and correct abstract of the Original Assessment Roll of Santa Cruz County for the fiscal year 1905, as appears upon said Roll now on file in my office.

PHIL HEROLD, *Clerk.*

TERRITORY OF ARIZONA, *County of Maric[illegible]:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona, do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Santa Cruz, Territory of Arizona, to the Territorial Board of Equalization for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capitol, this 17th day of November, A. D. 1905.

WESLEY A. HILL,
Territorial Auditor.

[SEAL.]

To the Territorial Board of Equalization: PRESCOTT, ARIZONA, *July 24th*, 1905.

Below find Abstract of the Assessment Roll of Yavapai County for the Year 1905:

Description of Property.	Number.	Value.	Value Improvements.	Total Value.
Cultivated Land, acres, 143	138656.46	199414.04	119975.00	319389.04
Uncultivated Land, acres				
Railroad Land, acres, .215 .227	210689.76	46503.46		46503.46
Land Grants, acres, .50	99445.20	49722.51	3000.00	52722.51
Patented Mines, number of mines, 914.22	1224	1119014.74		1119014.74
Improvements on Patented Mines		970735.00		970735.00
Improvements on Unpatented Mines		176760.00		176760.00
Town and City Lots		528256.50	908605.00	1436861.50
Horses, Range, 8.50	1838.	17630.00		17630.00
Horses, Work, 27.20	1783.	48525.00		48525.00
Horses, Saddle, 25.53	1152.	29415.00		29415.00
Horses, Stallions, 59.33⅓	8.	475.00		475.00
Mules, 22.25	222	4940.00		4940.00
Asses, 6.20	240	1490.00		1490.00
Cattle, Range and Stock, 10.00	27395.	273950.00		273950.00
Cattle, Beef, 11.50	60	700.00		700.00
Cattle, Milch Cows, 23.26	640	14890.00		14890.00
Cattle, Bulls, 26.90	13	350.		350
Sheep, 22.00	29147	58294.		58294
Goats, 2.00	17670	35340.		35340
Swine, 2.97	648	1925.		1925
Railroads, Standard Guage, main line	60.558	264941.25		264941.25
Railroads, Standard Guage, side track				
Railroads, Narrow Guage, main line	27.3	110000.00		110000.00
Railroads, Narrow Guage, side track				1238641.85
All Other Property				
Total Value of All Property				$6223466.35

COPPER QUEEN CONSOLIDATED MINING CO. VS.

78 TERRITORY OF ARIZONA, *County of Yavapai, ss:*

I, J. H. Robinson, Clerk of the Board of Supervisors of Yavapai County, Arizona Territory, do hereby certify that the foregoing statement is a full, true and correct abstract of the Original Assessment Roll of Yavapai County for the fiscal year 1905, as appears upon said Roll now on file in my office.

J. H. ROBINSON, *Clerk.*

TERRITORY OF ARIZONA, *County of Maricopa, ss:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona, do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Yavapai, Territory of Arizona, to the Territorial Board of Equalization, for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capital, this 17th day of November, A. D. 1905.

WESLEY A. HILL,
Territorial Auditor.

[SEAL.]

79 **Office of the Board of Supervisors, Yuma County, Arizona.**

To the Territorial Board of Equalization:

Below find Abstract of the Assessment Roll of Yuma County for the year 1905:

YUMA, ARIZ., *July 28th*, 1905.

Description of Property.	Number.	Value.	Value Improvements.	Total Value.
Cultivated Land, acres... { 4.19 ... } Uncultivated Land, acres { No. Diff. }	58285	244527.00	7090.00	251617.50
Railroad Land, acres	None			
Land Grants, acres	None			
Patented Mines, number of mines	52	12002.00		12002.00
Improvements on Patented Mines			14870.00	14870.00
Improvements on Unpatented Mines			10198.00	10198.00
Town and City Lots	1823	236305 50	114935.00	351240.50
Horses, Range, @ $11	187	2057.00		2057.00
Horses, Work, " 25	1008	25200.00		25200.00
Horses, Saddle, " 20	155	3100.00		3100.00
Horses, Stallions, " —	2	175.00		175.00
Mules, " 25	116	2900.00		2900 00
Asses	None			
Cattle, Range and Stock, @ $11	1650	18150.00		18150.00
Cattle, Beef	5	70.00		70.00
Cattle, Milch Cows, @ $20	199	3980.00		3980.00
Cattle, Bulls	3	46.00		46.00
Sheep	None			
Goats	None			
Swine, @ $3	724	2172.00		2172.00
Railroads, Standard Guage, main line	82.5 miles	587816.28		587816.28
Railroads, Standard Guage, side track	None			
Railroads, Narrow Guage, main line	None			
Railroads, Narrow Guage, side track	None			
All other Property				
Pullman Standard & Tourist Sleeping cars *pro rata*		6381.30		6381.30
Private car lines companies		113662.00		113662 00
Miscellaneous		166884.38		166885.38
Total Value of all Property				**$1572522.96**

80 TERRITORY OF ARIZONA, *County of Yuma, ss:*

I, J. M. Polhamus, Clerk of the Board of Supervisors of Yuma County, Arizona Territory, do hereby certify that the foregoing statement is a full, true and correct abstract of the Original Assessment Roll of Yuma County for the fiscal year 1905, as appears upon said Roll now on file in my office.

J. M. POLHAMUS, *Clerk.*

TERRITORY OF ARIZONA, *County of Maricopa, ss:*

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona, do hereby certify that the foregoing copy is a full, true and correct copy of the original Abstract of Assessment Roll as returned by the County Board of Supervisors of the County of Yuma, Territory of Arizona, to the Territorial Board of Equalization, for the year 1905, as appears of record in my office.

Given under my hand and official seal of office, at Phœnix, the Capital, this 17th day of November, A. D. 1905.

WESLEY A. HILL,
Territorial Auditor.

[SEAL.]

81 *Raises Made by the Territorial Board of Equalization from* 1887 *to* 1904.

August, 1887.

John J. Hawkins, Chairman. W. C. Foster, Secretary.

County.		Cattle.	Sheep.	Town & City Lots.
Cochise	Raised	20%	50%	
Gila	"	8.5%	17%	
Pima	"	4%	50%	
Pinal	"	45%	D. 50%	
Yuma	"	23%		
Apache	"	D. 5%	40%	
Graham	"	....	50%	
Yavapai		D. 5%		
Maricopa	"	....	50%	In. 15%
Mohave		D. 10%		

August, 1888.

John J. Hawkins, Chairman. Henry T. Andrews, Secretary.

County.		Lands.	Improved Lands.	Town and City Lots.	Improvements.	Schedule "C" Cattle.
Apache	Raised	....	10%	....	....	5%
Cochise	"	10%	10%	....	10%	5%
Graham	"	10%	10%	10%	10%	5%
Pima	"	10%	10%			
Gila	"	20%				
Yuma	"	20%	20%	20%	10%	
Pinal	"	....	10%	....	....	5%

82 August, 1889.

Thos. Hughes, Chairman. Ben Heney, Secretary.

County.	Horses.	Mules.	Asses.	Cattle.	Sheep.	Swine.
Pima	Raised... "	"	...	....	"	"
Yavapai	Raised... .182	....	.05	.492	....	.226
Cochise	" .. .0917	...	....	.0393	.50	
Yuma	" ... .16⅔	.25	.6153	D. .1542	.50	.25
Mohave	"	....	D. .125	. .	.3513	D. .1428
Pinal	" ... .1314	.129	.0427	.2527	.50	Raised.
Gila	" ... .02073	.0982	.2198	....	.0713	.1931
Graham	"	...	.01303	....	.50	.09554
Maricopa	" ... Valuation fixed without a return.					
Apache	" ... "	"	"	"		

See opinion Att'y Gen'l Churchill concerning raising certain classes page 77, Minute Book Records 1889.

Pima	County, all other lands except Grant lands	20%
Yavapai	" " " " " "	75%
Yuma	" Railroad Grant lands	150%

83 August, 1890.

Thos. Hughes, Chairman. Ben Heney, Secretary.

County.	Horses.	Cattle.	Sheep.	Goats.
Apache	Raised..			
Cochise	"	14%	3%	50%	
Gila	.....	....	D. 10		
Graham	"	...	D. 10	.0919	
Maricopa	"	....	10%	Raised	
Mohave	"	D. .084	D. 15	...	.33⅓%
Pima	"	16%	..	.50	
Yavapai	..... .	....	10%		
Yuma	.....	....	D. 10	Raised.	
Pinal	... .				

August, 1891.

Thos. Hughes, Chairman. Ben Heney, Secretary.

County.	Horses.	Sheep.	Cattle.	Swine.	Hogs.	Goats.	Asses.
Apache.....	R. 15%	R. 33⅓%					
Coconino ...	R. 59½%	....	R. 12%	D. 40%			
Cochise.....	....	R. 60%	R. 5%	....	D. 10%		
Gila.....	...	R. 20%	R. 5%	R. 25%	....		
Graham.....	D. 10%	R. 35%	....	R. 5%	....	....	D. 10%
Maricopa....	D. 5%	R. 35%	R. 5%	R. 85%	....	R. 100%	D. 35%
Mohave.....	D. 15%	R. 60%	....	D. 50%	....	....	D. 15%
Pima.....	R. 16%	R. 20%	R. 6%	R. 40%			
Pinal.....	....	R. 20%	Raised.02	R. 10%	....	....	D. 35%
Yavapai.....	....	....	R. 5%	R. 25%			
Yuma.....							

Raised—R. Decreased—D.

In minutes of 1901, Page 81, Chairman declared that the Equalization of the Valuations placed by the various County Boards upon the different classes of property throughout the Territory was in order.

84 August, 1892.

Thos. Hughes, Chairman. Ben Heney, Secretary.

County.	Horses.	Sheep.	Cattle.	Hogs.	Acres land.	Swine.
Apache	R. 4½%	R. .077⅞	....	R. 348		
Coconino	....	....	....	....	....	D. 108
Cochise	....	....	....	....	....	R. 52%
Gila	R. 1.8%	R. 33⅓%	....	....	....	R. 6.07%
Graham	R. 19%	....	....	R. 7.09%		
Maricopa	R. 3⅛%	R. 18%	....	R. 1.3817%		
Mohave	D. .0938	....	....	....	....	R. 1.543%
Pima	R. 14½%	R. 35.65%	....	R. 1.268%		
Pinal	R. .036%	....	R. 12%	R. 6.04%		
Yavapai	....	....	....	R. 38.83%		
Yuma	...	....	....	R. 33⅓%		

Raised—R. Decreased—D.

August, 1893.

H. C. Boone, Chairman. Ben Heney, Secretary.

County.	Horses.	Sheep.	Cattle.	Swine.	Acres land.
Apache	R. 13%	R. 10%	R. 6%		
Cochise					
Coconino	R. 6%	...	D. 9½%		
Gila	....	R. 5%	R. 7%		
Graham	....	....	D. 15%	....	R. 103
Maricopa	....	R. 4½%	R. 10%	R. 85%	
Mohave	D. 15%	...	R. 7%		
Pima	R. 14%	R. 26⅓%	D. 3⅛%		
Pinal	...	....	R. 7%		
Yavapai	....	...	R. 7%		
Yuma	....	R. 20%			

Raised—R. Decreased—D.

85 August, 1894.

H. C. Boone, Chairman. Ben Heney, Secretary.

County.	Cattle.	Swine.	Sheep.	Acres land.	Hogs.
Apache	....	....	R. 5 cts. per head.		
Cochise	....	....	....	R. 50%	R. 21%
Coconino	R. 75 cts. per head.	....	R. 5 cts. per head.	R. 7.4%	
Gila	....	R. 28%	R. 56 cts. per head.		
Graham	D. 25c. per head.				
Pinal	....	R. 58%	D. 31 cts. per head.		
Maricopa	R. 10%	R. 37%	....	R. 25%	
Yavapai	....	....	D. 50 cts. per head.		

Raised—R. Decreased—D.

August, 1895.

C. P. Leitch, Chairman. A. M. Franklin, Secretary.

County.	Cattle.	Mules.	Acres land.	Town & City lots.	Improvements.
Cochise Raised	....	250%	50%	....	....
Maricopa "	10%	....	....	10%	....
Yuma "	....	....	40%	15%	15%

August, 1896.

C. P. Leitch, Chairman. A. M. Franklin, Secretary.

County.	Horses.	Cattle.	Lands.
Cochise Raised	10%	10.5%	....
Coconino "	....	2.75%	....
Mohave "	....	8.75%	....
Pima "	10%	....	....
Pinal "	....	11.5%	....
Yavapai "	....	12%	....
Yuma "	....	....	40%

86 August, 1897.

C. P. Leitch, Chairman. Wm. F. Cooper, Secretary.

County.	Horses.	Sheep.	Cattle.	Swine.	Goats.	Land.
Apache	....	....	....	....	R. 24%	R. 80%
Coconino	....	R. 22%	R. 29½%	....	....	R. 33%
Graham	D. 16%	D. 8%	R. 17%			
Gila	....	R. 14%	R. 11⅛%	....	D. 7½%	
Maricopa	D. 10½%	R. 36%	R. 4½%	R. 33⅓%	R. 4½%	
Mohave	....	R. 50%	R. 2½%			
Pima	....	....	R. .0001	....	D. 17%	
Pinal	....	....	....	R. 4%		
Yavapai	....	R. 12%	R. 12½%	....	R. 15½%	
Navajo	....	R. 22%	R. 11%	....	R. 4%	R. 100%
Yuma	....	....	R. 3%	....	....	R. 17%
Cochise	R. 33%	R. 7%	R. 14⅓%	....	R. 25%	R 20%

(Patented mines assessed as such for 1st time in 1897.)
For Col. Herring's speech see records page 115 Records of Jan. 1898.

Raised—R. Decreased—D.

August, 1898.

Geo. W. Vickers, Chairman. Wm. F. Cooper, Secretary.

County.	Cattle.	Sheep.	Horses.	Goats.	Swine.
Apache	....	R. 33⅓%	....	R. 112%	
Cochise	R. 2%	R. 33⅓%	....	R. 33⅓%	
Coconino	R. .06%	R. 41.8%	....	R. 44.9%	
Graham	R. 14.4%	R. 35.1%	D. 17.1%	R. 41.8%	
Gila	....	R. 100%	....	R. 72.4%	
Maricopa	R. 4.1%	....	....	R. 36%	R. 32.2%
Mohave	R. 10.7%				
Navajo	D. 3.3%	R. 35%	....	R. 34.2%	
Pima	....	R. 31.6%	....	R. 51.5%	
Pinal	D. 1%	R. 33⅓%	D. 11.2%	....	R. 77.5%
Yavapai	R. 11 1/10%	R. 31⅓%	....	R. 61.2%	R. 8.7%
Yuma	R. 2.7%	....	....	....	R. 77.5%

Raised—R. Decreased—D.

87 August, 1899.

Geo. W. Vickers, Chairman. Harvey J. Lee, Secretary.

NOTE.—Page 204, Records of 1899.

It was moved to accept as returned the valuations placed on mining properties from all the counties returning same.

County.	Cattle.	Sheep.	Mules.	Swine.	Goats.	Lands.	Horses.
Apache	R. 22.5%	R. 33%	.....	.....	R. 7%	R. 11%	R. 6% Saddle
Cochise	.....	.....	R. 2%	.....	.....	.....	R. 2% Work R. 10% Saddle
Coconino	.....	.....	.....	.....	R. 33⅓		
Graham	.....	.....	.....	R. 3%			
Gila	.....	R. 3⅓%	R. 10%	.....			
Maricopa	.....	.....	.....	R. 4%			
Pima	.....	.....	.....	R. 7%	.....	.....	R. 5% Range
Pinal	.....	R. 33%	R. 15%	R. 60%			
Yavapai	.....	.....	.....	R. 7%	R. 10%	R. R. Land	D. 21%
Yuma	R. 10%	.....	R. 10%	R. 47%	.....	.....	R. 10% Work R. 10% Saddle

Raised—R Decreased—D.

August, 1900.

Geo. W. Vickers, Chairman. Harvey J. Lee, Secretary.

Page 258, Records of 1900.

It was moved and carried to accept as returned the valuations placed on Mining Properties by all counties returning same.

County.		Cattle.	Sheep.	Mules.	Swine.	Goats.	Horses.
Apache	Raised..	....	17%				
Cochise	" ..	....	3.1 %	11.5 %	12%	...	20% Range 13.5% Work 3.4% Saddle
Gila	" ..	....	....	4.2%	....	....	.2 % Saddle
Graham	" ..	....	....	....	77.5 %		
Coconino	" ..	....	....	....	50 %		
Maricopa	" ..	(Beef)18.3%	....	....	20.8%	37%	
Mohave	" ..	....	....	....	15.4%		
Pima	" ..	....	....		....	....	75% Saddle
Pinal	" ..	....	....	19.5 %	27.1 %		
Santa Cruz	" ..	....	100 %	3.6%	....	100%	33 9% Work
Yuma	" ..	80.5 %	....	57.5 %	....	....	66⅔ % Range 39.3 % Work 33⅓ % Saddle

88 August, 1901.

Geo. W. Vickers, Chairman. Harvey J. Lee, Secretary.

Page 307, Records of 1901.

County.		Range Cattle.	Milch Cows.	Land Grants.	Goats.	Mules.	Swine.	Horses.
Apache	Raised..	....	7.85 %	....	....	80%	4.5%	
Cochise	" ..	....	....	....	....	....	....	1.37 % S.
Maricopa	" ..	....	....	....	33⅓%	1.25 %	40.1%	39.1% W.
Gila	" ..		33.09%	....	....	25%	....	25% W.
Mohave	" ..	1.52%						
Navajo	" ..	....	....	Lands	35.35%			
Pinal	" ..	....	....	....	....	5.2%	5.2%	
Pima	" ..	....	....	100%	....	1%	....	2.1% S.
Santa Cruz	" ..	....	5.7%	....	....	13%	....	67.78% R. 43.9% W. 9.5% S.
Yavapai	" ..	....	7.18%	....	4.7%	....	....	
Yuma	" ..	....	14.8	....	....	....	....	27% W. 36.9% S.

August, 1902.

W. F. Nichols, Chairman. Frank D. Lane, Secretary.

County.		Cattle.	Sheep.	Milch Cows.	Land Grants.	Goats.	Swine.	Mules.	Horses.
Apache	Raised	....	....	....	....	....	3.4%		
Cochise	"	Range 2%	10%	....	....	4.7%	9%		
Gila	"	....	....	6.8%	....	....	....	10.6%	
Graham	"	....	....	....	....	2%	30.4%		
Maricopa	"	....	....	....	....	37%			
Pima	"	....	....	14%	50%				
Pinal	"	....	....	....	....	....	5.6%	6.5%	
Santa Cruz	"	4%	....	1.1%	....	....	9%	6%	36.4% R. 6.4% W. 8.1% S.
Yuma	"	....	....	....	....	....	....	8%	

89 August, 1903.

W. F. Nichols, Chairman. Frank D. Lane, Secretary.

County.		Mules.	Asses.	Goats.	Milch Cows.
Apache	Raised	....	....	9.8%	24.19%
Cochise	"	....	....	....	15.9%
Gila	"	1.01%	1.60%	....	26.9%
Graham	"	....	....	....	25%
Maricopa	"	3.26%	....	36.05%	
Mohave	"	....	....	....	25%
Navajo	"	....	....	....	25%
Pinal	"	13.3%	....	....	
Santa Cruz	"	....	44.5%	39.86%	15.85%
Yavapai	"	21.4%	....	....	19.4%

August, 1904.

I. M. Christy, Chairman. Wesley A. Hill, Secretary.

See Page 334, Pat. Mines.

County.		Range Cattle.	Milk Cows.	Mules.	Horses.
Cochise	Raised	....	97%	....	
Gila	"	....	24.7%	....	16% S.
Maricopa	"	....	....	3.21%	
Mohave	"	....	25%	....	
Navajo	"	.04%	25%	....	
Pima	"	83.15%	44.5%	....	25% W. 47.4% S.
Pinal	"	....	....	....	62.6% S.
Santa Cruz	"	....	....	76%	1% S.
Yavapai	"	....	....	....	13.37%
Yuma	"	....	25%	.088%	

90 TERRITORY OF ARIZONA, *County of Maricopa*, ss:

I, Wesley A. Hill, Territorial Auditor of the Territory of Arizona, hereby certify that the foregoing is a full, true and correct copy of the raises and decreases made by the several Territorial Boards of Equalization at its sessions during the years 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, & 1904, as appears of record in a book kept for that purpose at my office.

Given under my hand & seal of office at Phœnix, the Capitol this 17th day of November, 1905.

WESLEY A. HILL,
Territorial Auditor.

[SEAL.]

(Endorsed:) No. 927. In the Supreme Court of the Territory of Arizona. In the Matter of the Application of the Copper Queen Consolidated Mining Co., a corporation for a Writ of Certiorari against The Territorial Board of Equalization of the Ter. of Ariz. composed of Wesley A. Hill, Chairman, *et al.* Return to writ. Filed Nov. 20, 1905. S. M. Cullom, Clerk.

91 In the Supreme Court of the Territory of Arizona.

COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, Petitioner,

vs.

THE TERRITORIAL BOARD OF EQUALIZATION, Respondent.

An Original Proceeding for a Writ of Certiorari.

Demurrer to the Amended Application for the Writ Sustained.

Messrs. Herring and Sorin, for Petitioner.
Mr. E. S. Clark, Attorney-General, for respondent.

NAVE, *A. J.:*

The Copper Queen Consolidated Mining Company made application that a writ of certiorari should be issued out of this court by an Associate Justice thereof, directed to the Territorial Board of Equalization, requiring that Board to certify certain records to this court, and to show cause why certain acts and proceedings complained of in said application should not be declared void and vacated. Upon the application, on September 22, 1905, a writ was issued by one of the Associate Justices, returnable before the full bench of this court on the 17th day of November, 1905. On November 16, 1905, petitioner filed in this court its amended application for a writ of certiorari.

92 The Board of Equalization made return in compliance with the writ, but interposed a demurrer to the amended application. By consent of the parties, expressed in open court, the right of the petitioner to the writ was argued before the full bench upon this demurrer. Therefore, we may with propriety consider the questions raised by demurrer, as if no writ had been issued, and determined whether upon the facts set forth in the amended application, thus conceded to be true, the petitioner is entitled to relief.

The salient facts alleged in the application are, that the petitioner is the owner of real and personal property situated in Cochise county; that at a session of the Territorial Board of Equalization on the 17th day of August, 1905, that board, while having under examination the various assessments and abstracts of assessment rolls returned to it from the various counties of the territory, and under consideration the question whether the valuation of property in each county bears a fair relation or proportion to the valuation in all other counties of the territory, did, for the alleged purpose of equalizing the rate of assessment in the various counties, add to the assessed valuation of

patented mines in said county of Cochise for the year 1905 fifteen hundred per cent. thereof, which was an increase of $3,345,277.05; similarly, did add to the valuation of work horses in said county nineteen per cent. thereof, to the valuation of saddle horses thirty-one per cent. thereof, to the valuation of improvements on unpatented mines one thousand per cent.; that the said Board
93 similarly increased the assessed valuation of some special class or classes of property in each and every county of the territory; that thereby the aggregate valuation of property in each and every county of the territory was increased over and above the aggregate valuations of property therein, as fixed by the respective assessors and Boards of Equalization of the said counties for the year 1905. These increases in aggregate valuations are set forth in the petition in a table showing increases ranging from $81.87 in Coconino county, to $3,370,216.60 in Cochise county, and showing that the aggregate increased valuation of property in the territory for purposes of taxation of the same, was $9,554,060.29 over and above the sums of the aggregate valuations of the several counties therein, as fixed for the year 1905 by the assessors and Boards of Equalization of the respective counties and returned to the Territorial Auditor in the abstracts of assessment rolls of said counties.

Petitioner further shows, that the increased valuation of petitioner's property resulting from the act of the Territorial Board of Equalization, is $847,951.

It is contended by the petitioner that the Territorial Board of Equalization, in performing the acts alleged, exceeded its jurisdiction for two reasons:

First. The Board of Equalization has no power to increase the sum of all the valuations of the several counties of the Territory, as fixed and determined by the assessors and Boards of the several counties; and,
94 Second. The board has no authority to raise or diminish the valuations placed upon different classes of property in any county.

At the threshold of the consideration of this case, we meet the contention on the part of the petitioner that the statutes conferring the authority upon the Territorial Board of Equalization, under which it assumed to act, were adopted from the statutes of Colorado; that, in the case of Bell *v.* Lothrop, 3 Colo., 428, these statutes had received an interpretation from the court of last resort of that state prior to their adoption by the legislature of the territory of Arizona, and that this interpretation was to the effect that under these statutes the State Board of Equalization of Colorado had no power to increase the sum of all the valuations of the several counties, as fixed by the assessors and Boards of Equalization of the several counties, but that this sum must be taken as the aggregate valuation of all the property in the state, and is conclusive and final as against the said Board of Equalization. If this contention is well founded, this demurrer must be overruled; for under such circumstances it will be presumed that the legislature of Arizona adopted the statute of Colorado with the interpretation given to it in that state.

Henrietta Mining Company *v.* Gardner, 173 U. S., 123;
Goldman *v.* Sotelo, 68 Pac., 558.

It appears that paragraphs 3877 and 3879 of the Revised Statutes of 1901 (which are a re-enactment of paragraphs 2655 and
95 2656 of the Revised Statutes of 1887) are in large portion, if not in all material points, identical, respectively, with paragraphs 2279 and 2281 of the General Laws of Colorado of 1877. Paragraph 3880 of the Revised Statutes of 1901 (a re-enactment of paragraph 2658 of the Revised Statutes of 1887) is the particular paragraph which we must interpret, and is as follows:

"3880. (SEC. 50.) The said board shall ascertain whether the valuation of *property* in each county bears a fair relation or proportion to the valuation in all other counties in the territory, and on such examination they may increase or diminish the *valuation* of *property* in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of *property* in the territory; but in no instance shall they reduce the aggregate valuation as returned by the boards of supervisors of the several counties. And said board shall at the same time fix the rate of taxes for territorial purposes which is to be levied and collected in each county."

Paragraph 2282 of the General Laws of Colorado of 1877, from which it is contended that we adopted the paragraph just set out, is as follows:

"2282. SEC. 43. Said Board shall ascertain whether the valuation of *real estate* in each county bears a fair relation or proportion to the valuation in all other counties of the state, and on such examination they may increase or diminish the *aggregate* valuation of *real estate* in any county, as much as in their judgment may be
96 necessary to produce a just relation between all the valuations of *real estate* in the state; but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as returned by the clerks of the several counties."

The material differences in phraseology of the two paragraphs we have indicated by italics.

While the rule as to the adoption with an adopted statute of a prior interpretation is as set forth above, "of course a change of phraseology which necessitates a change of construction will be deemed as intended to make a change in the law." McDonald *v.* Hovey, 110 U. S., 619. This latter doctrine is pertinently applied in the cases of Stutsman County *v.* Wallace, 142 U. S., 293; Swofford etc. Co. *v.* Mills, 86 Fed., 556; Kirman *v.* Powing, 61 Pac., 1090.

It is to be noted that the Colorado statute provides: "Said Board shall ascertain whether the valuation of *real estate* in each county bears a fair relation," etc., and that "they may increase or diminish the *aggregate* valuation of *real estate* in any county;" while the Arizona statute provides: "Said Board shall ascertain whether the valuation of *property* in each county bears a fair relation," etc., and that "they may increase or diminish the valuation of *property* in any county." In the Arizona statute the word "property" appears where the words "real estate" appear in the Colorado statute;
97 and the word "aggregate," which appears in the Colorado statute, does not appear in the Arizona statute. While, by reason of this difference, the meaning of the Arizona statute does not necessarily differ from that of the Colorado statute with reference to

the power of the Territorial Board of Equalization to increase the sum of the valuations of the several counties as fixed by the county officers, there is, nevertheless, a very material difference in the meaning of these statutes in other respects. In view of this difference, we do not feel constrained to follow the interpretation given to the Colorado statute, even conceding, by force of the identity of large portions of the other Arizona and Colorado statutes to which reference is made, and by reason of the general similarity of phraseology of the two paragraphs set forth above, that the laws of Colorado were before the legislature of Arizona when the Arizona statutes in question were enacted, and supplied a considerable portion thereof. Furthermore, a careful examination of the case of Bell *v.* Lothrop, *supra*, discloses that the language of the statute in question was not construed. The controlling factor in the conclusion reached in that case was a provision of the constitution of Colorado. While a Board of Equalization is limited to the exercise of those powers only which are clearly conferred upon it by law, and while it would make no difference in the determination of the extent of such powers whether they are conferred by statute or by constitution, yet, on the other hand, statutes can not confer power upon public officers if that power is restricted by constitutional provision. Therefore,
98 the statutes of Colorado could not confer powers upon the State Board of Equalization which by a reasonable construction and application of the constitution of Colorado that board could not exercise. The Supreme Court of Colorado could not construe the constitution and statutes together so as to arrive at a reasonable construction of the law, but were under necessity first to interpret the constitution, and then to hold the statutes to be limited by the constitution, no matter how much broader in their scope the statutes would be if not so limited. In the interpretation of the Arizona statutes, there are no constitutional limitations to be taken into consideration. We are not only at liberty to, but must, interpret all of the Arizona statutes bearing upon the power of the Board of Equalization in such wise as to give effect to the evident intention of the legislative power. The Supreme Court of Colorado could not give effect to the evident meaning of the legislature, if the legislature meant to confer more power upon the State Board of Equalization than was authorized by the state constitution.

The Colorado constitution provided: "The duty of the State Board of Equalization shall be to adjust and equalize the valuation of real and personal property among the several counties of the state. The duty of the County Board of Equalization shall be to adjust and equalize the valuation of real and personal property within the respective counties." These provisions of the Colorado constitution have not been adopted into the statutes of Ari-
99 zona, and, moreover, if so adopted, would not control or limit the interpretation of other statutes of Arizona, but all the statutes would be interpreted in such wise as to give effect to the intention of the legislature, if that could be determined. That the Supreme Court of Colorado interpreted constitutional provisions, and that the statutes were limited by this interpretation, is manifest from the opinion of that court. The Court say: "Section 38 (General Laws, page 754) provides that the county commissioners of

each county shall constitute a Board of Equalization for the correction and completion of the assessment rolls, with power * * * for the purpose of equalizing the same, to increase, diminish, or otherwise to alter and correct any assessment or valuation. * * * It constitutes them a *quasi* court to hear any * * * complaints of the taxpayer * * * with full power to adjust and correct the assessment roll * * * ; *thus adding statutory duties to their constitutional duties to adjust and equalize.* * * * The assessor is * * * made an integral part of the revenue system which not only * * * specifies and defines his duties, but assigns to other officers a number of equally well defined and separate duties. The assessor shall list and value; the Board of Commissioners shall equalize, adjust, * * * and hear complaints; * * * the State Board of Equalization shall adjust and equalize valuations * * * Looking, then to the provisions of the constitution and the statute, we are clearly of the opinion that
100 the power to fix and determine the valuation of taxable property is lodged by them in the assessor and Boards of the County Commissioners of the several counties in the state; and when they have performed this duty, the sum of the valuations of the several counties so by them found, must be taken as the aggregate valuation of all the property in the state, and is conclusive and final as against the State Board of Equalization. The State Board may for the purpose of equalizing, or adjusting, increase the aggregate valuation of one county and decrease the aggregate valuation of another, but they have no power to increase the sum of all the valuations of the several counties of the state."

People *v.* Lothrop, 3 Colorado, 428.

These provisions of the constitution of Colorado were adopted into the constitution of Montana. In interpreting them, the Supreme Court of Montana, in State *ex rel.* Wallace *v.* State Board, 46 Pac., 266, after quoting from the decision of the Supreme Court of Colorado above cited, say: "These comments by the Colorado court upon the *constitutional restrictions* placed upon the powers of the State Board of Equalization of that state, apply to the enactments today in force, of our constitution." The same court, State *v.* Fortune, 60 Pac., 1087, say:

"The learned Attorney-General cites sections 3690, 3800-3802, of the Political Code, as conferring upon the State Board of Equalization authority to do that which it attempted to accomplish; *but statutes can not clothe the State Board with power denied to it*
101 *by the fundamental law.*" Brantly, Chief Justice, concur-ing specially, said: "I concur solely on the ground of *stare decisis.* If the question involved were a new one in this state, I should be in favor of disregarding the construction given to the *section of the constitution* by the Supreme Court of Colorado in People *vs.* Lothrop, 3 Colorado, 428, and followed by this court in State *ex rel.* Wallace *vs.* State Board, as demonstrably wrong."

Our legislature is not limited by constitutional restrictions upon the power which it may give to the Territorial Board of Equalization. Furthermore, we have not adopted as a statute the provision of the

constitution of Colorado making it the duty of the County Board of Equalization "to adjust and equalize the valuation of real and personal property within the respective counties." The Supreme Court of Colorado seem to have interpreted that language as limiting the power which may be conferred upon the State Board. Whether the interpretation is correct, or incorrect, it is an interpretation of language not in our statutes. Therefore, in no aspect of that case, are we concluded by the decision there reached.

With respect to the particular point now under consideration, our statutes do not seem difficult of interpretation. The various county assessors must, in the first instance, assess the property in the various counties to its individual owners, at its cash value, and place these assessments upon the assessment roll. (R.S. 3836,3847,3861)

102 The duties of the Boards of Supervisors (as County Boards of Equalization) are described as follows: "To equalize assessments." (R. S. 973, subd. 14) "Said board shall have power to determine whether the assessed value of any property is too small or too large, and it may change and correct any valuation, either by adding thereto or by deducting therefrom if, in its judgment from the information then possessed by it, the value fixed in the assessment roll is too small or too large, whether such value was fixed by the owner or by the assessor; and if the Board shall believe it to be right to add to the assessed value of any property, it shall cause this fact to be inserted in the advertised notice herein after provided to be given; but no assessment can be raised by the Board unless it is included in such advertised notice." (R. S. 3868)

Thus it is perceived that the county assessors and the Boards of Supervisors concern themselves with the assessments to individual taxpayers. When the assessors and supervisors have performed their duties, the clerks of the Boards of Supervisors must make abstracts of the assessment rolls, showing the quantity of the various kinds of property by classes, and the total assessed valuation of each class, in their respective counties, and transmit the same to the Territorial Board of Equalization. (R. S. 3877)

103 By this paragraph, the Territorial Board of Equalization is authorized to diminish or add to the list of classes of property therein provided, and to require such different or further matters to be returned as it may deem advisable. By paragraph 3879 this Board is required to "examine the various assessments, so far as regards the territorial tax, and equalize the rate of assessment in the various counties whenever they are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors and (County) Boards of Equalization."

Paragraph 3880 provides: "The said Boards shall ascertain whether the valuation of property in each county bears a fair relation or proportion to the valuation in all the counties of the territory, and on such examination, they may *increase* or *diminish* the valuation of property in any of the counties, as much as in their judgment may be necessary to produce a just relation between all the valuations of property in the territory." The extent of this power seems to us so clear and unequivocal as to require but little interpre-

tation. Arizona has thirteen counties. If, in the judgment of the Board of Equalization, the assessed valuation of property in one of these thirteen counties does not bear a fair relation or proportion to the valuation in the other twelve counties, if the valuation in the twelve counties is a correct one, and if the valuation in the one county is in unfair relation or proportion, by reason of its being too low, is it inferable, or even reasonably arguable, from the provisions of these statutes, that the Board can not raise the valuation of property in the one county to such rate as to produce a just relation between all the valuations of property in the territory, because thereby the aggregate valuation of all property in the territory is increased? It seems to us clear from the language of the statute, in the portion quoted, that the Board of Equalization has the power, and it is its duty, to increase or diminish valuations of property in any county without reference to the question whether thereby the total valuation of all property in the territory is increased or diminished. To limit this construction, however, the legislature added to this paragraph the provision: "But in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as determined by the Boards of Supervisors of the several counties." This limitation certainly does not imply that the Board may not raise such aggregate valuation, but, rather, strongly implies the contrary.

104

In opposition to this view, we are cited to a number of decisions, distinguishable, in the main, in the terms of the statutes interpreted. A case not thus to be distinguished is that of Poe *vs.* Howell, 67 Pac., 62. This is not a decision of an appellate, but of a *nisi prius* court, and has, therefore, less weight as authority. An examination of the case discloses that the Territorial Board of Equalization of New Mexico had "increased the value of improved real estate and all stocks of merchandise in incorporated villages, town-, and cities, ten per cent., and all stocks of merchandise outside of incorporated villages, towns, and cities, fifteen per cent. of the said valuation thereof, as fixed and returned by the several county assessors," in every county in the territory. The New Mexico statute gave this Board power "to adjust and equalize the assessment roll by raising or lowering the values thereof so that the same shall be of uniform value throughout the territory." A horizontal raise in the same per centage of all property in the same class, in all counties, left the property, as regards uniformity of assessment, precisely as it was before the raise. Therefore, the facts before the district court in that case were in nowise similar to the facts before us. In many expressions in the opinion of the district judge, not necessary to his conclusion in the case, we do not concur. The opinions of the Supreme Court of Montana, in the two cases of State *vs.* State Board, 46 Pac., 266, and State *vs.* Fortune, 60 Pac., 1086, from which we have already quoted, are cited by petitioner, but are inapplicable for the same reason that People *vs.* Lothrop, hereinbefore considered at much length, is not applicable. The Montana cases rest upon the Colorado case.

105

The Territorial Board of Equalization of Arizona did not exceed its jurisdiction by reason of the fact that the effect of its action is to increase the aggregate valuation of all the property in the territory.

The second contention is that the Board of Equalization exceeded its jurisdiction by increasing the assessments upon certain classes of property within the various counties. It is insisted that the Board must act upon the aggregate valuation of all property in each
106 county as a whole; that it must be assumed that the taxes have been equitably and uniformly levied among the various taxpayers within the county and among the various classes of property in the county. This is a very plausible theory, but overlooks that very weakness of human nature which our tax system, with its various devices looking toward the procuring of uniformity, expressly recognizes. The functions of the County Boards of Supervisors, as County Boards of Equalization, are based upon the recognized fact that county assessors can not be relied upon invariably to assess individual tax payers with uniformity. The appeal provided for from the County Boards of Equalization to the District Court discloses the knowledge of the legislative mind that the County Boards of Equalization may do injustice in their assessments upon individual taxpayers. The direction to the Territorial Board of Equalization to ascertain whether the valuation of property in the county bears a fair relation to the valuation in all other counties in the territory, discloses a like knowledge that there may be an unfair relation which some functionary should attempt to rectify. Finally, when all the machinery of the law has been called into operation, the result is far from uniformity of taxation, either as among the counties, among the classes of property, or among the individual taxpayers. The legislature seem to us to have recognized that, due to local conditions, cattle might be assessed in one county at three dollars per head, and might be assessed in
107 another county ten dollars per head, and yet be of the same actual value in each county. If in Cochise county all property except cattle should be assessed at the same relative valuation as in other counties, and cattle should be assessed at but one-half of their true relative valuation, Cochise county would, unless some remedy were applied, bear a less share of the territorial taxes than it ought. Under the contention of petitioners, a raise in the assessed valuation of all the property in Cochise county must be made, which would thus result in imposing upon all property owners of that county except cattle owners the payment of taxes above their fair proportion, and the payment of taxes on an assessed valuation higher than the valuation on the same property in all other counties of the territory.

The Supreme Court of New Mexico had recently before it this question in the case of the Territory *vs.* Bank, 65 Pac., 173. In an opinion which we think well reasoned and well expressed, the evil of such a construction as contended for by petitioners, and the soundness of a contrary construction are pointed out by the Court in that case. We do not overlook the decisions in numerous cases cited to us holding that similar boards may not lawfully raise or diminish valuations by classes of property. We have examined those cases, but find that they construe statutes differing so widely from ours that they afford us but little aid in the interpretation of our statutes.

We think a fair and reasonable interpretation of our
108 statutes discloses the intention of the legislature to confer upon the Territorial Board of Equalization, for the purpose

of producing a just relation among all the valuations of property in the territory, so far as regards the territorial tax, the power to increase or diminish the valuation of property in any county by classes. At most, it can be urged only that, from the language used, a doubt exists as to such intention. Were such doubt well founded, we should feel constrained to follow the long continued interpretation given by the Territorial Board of Equalization to the statutes in harmony with this view. For eighteen years, ever since its creation, that Board, without question from any source, and upon the advice of numerous attorneys-general, has raised and lowered valuations of property within the several counties of this territory, by classes. This court will take judicial notice of this practical construction.

Bloxham *v.* Consumers Electric R. R. Co., 36 Florida, 519.

We are not bound to be ignorant of that which every intelligent taxpayer in Arizona knows.

State *v.* Kelly, 81 Pac., 450.

This construction of these statutes by the Board on whom was imposed the duty of executing them, would resolve such a doubt in favor of that construction.

U. S. *v.* Finnell, 185 U. S., 236;
Schell *v.* Fausch, 138 U. S., 562;
U. S. *v.* Alabama, 142 U. S., 615;
U. S. *v.* Philbrick, 120 U. S., 52.

In construing the intent of the legislature, it is a significant
109 fact that with such long-continued construction by such officials before it, the legislature, in its revision of the law in 1901, re-enacted the provisions without substantial change

In argument, it was contended that, assuming that the Territorial Board of Equalization, in equalizing the rate of assessment in the various counties, is not restricted to an increase or decrease of the sum of the valuations of property in each county, but may equalize valuations by classes of property, nevertheless, the Board is confined to the classifications made by paragraph 3877; that the provision in said paragraph that the Territorial Board of Equalization may diminish or add to the list given, and may, in its discretion, require different or further matters to be returned, must be construed as applying to property which does not fall within any class specifically mentioned. This contention is especially urged with respect to any sub-classification of lands, for the reason that by paragraph 3849 the owner of land, except town or city lots, is required, in returning his list of property, to describe the same by section or part of section, township, and range, and where such part of section is not a legal subdivision, or is unsurveyed, by some other description sufficient to identify it; and that it is further provided by paragraph 3861 that the assessor, in preparing the tax list or assessment roll, shall put down therein all real estate taxable to each inhabitant, firm, incorporated company, or association, described by metes and
110 bounds, or by common designation or name; if situated within the limits of any city or incorporated town, describing

by lots or fractions of lots, if situated without such limits, giving the number of acres as nearly as can conveniently be ascertained, and the location and township where situate. It was contended that no authority is found in these provisions of the revenue act for the listing of land in such a way that its character may be determined, either by the assessing officers of the county, or by the Territorial Board of Equalization, so as to permit of any sub-classification for the purpose of equalization. Conceding, for the argument, that the requiring in certain instances of a listing of real estate by "some description sufficient to identify it," and its description "by common designation or name," does not go so far as to require a description from which a sub-classification of lands as mineral or non-mineral may be made, certainly we see nothing to prohibit extending upon the assessment roll the description of land beyond that required in the statute, so as to designate its particular character, nor reason why, if such designation appears to have been made uniformly throughout the territory, a classification based thereon may not be made for the purpose of equalization. Furthermore, we find in the provisions of paragraph 973, conferring upon the Board of Supervisors supervisory control over assessing officers, and general legislative authority as to matters within their jurisdiction, sufficient power for them to require the assessor to note upon the as-
111 sessment roll in which of various ascertainable classes each piece of land falls. Patented mines are readily ascertainable as such. Such classification, in fact, depends merely upon the description of the land as mineral, for by paragraph 3835 land is defined as expressly excluding unpatented mines.

Therefore, we construe the provision in paragraph 3877, authorizing the Territorial Board of Equalization to diminish or add to the classifications specifically mentioned, as conferring upon said Board authority to require the County Boards of Equalization to make return, as a distinct class, of patented mines, or of any other sub-classification of real estate appearing upon the assessment rolls. The petition discloses that the Territorial Board of Equalization treated patented mines as a distinct class of lands. Therefore, we must assume, in the absence of a contrary averment, that the assessment rolls of the various counties furnished the necessary information, in the first instance, and that the Boards of Supervisors, from the information thus afforded, returned to the Territorial Board patented mines as a distinct class of real estate.

There was further suggested, as an objection to the action of the Board, a matter which seems to us not to be within the record as made by the application and demurrer. This is, that the Board seeks to require the county officers to adopt for the purposes of county taxes the changes in valuations made by it. It may be said
112 to appear inferentially in the application that the county of Cochise is proposing to collect county taxes upon the valuations as raised by the Territorial Board of Equalization. Be this as it may, the sole question before us is whether the Territorial Board exceeded its jurisdiction, and not whether some other board or officer is unlawfully extending the lawful order of that Board.

It does not appear, even inferentially, that the Territorial Board has undertaken to make a change in valuations for any other purpose than, in the language of the statute, "as regards the territorial tax," nor does it appear that this Board has sought to direct the carrying into effect of the changes made by it for any other purpose.

By reason of the scope covered in argument, and the close relation existing between this case and the *mandamus* suit of The Territory of Arizona *vs.* The Board of Supervisors of Yavapai County, presented in oral argument with this case, it is appropriate to point out that we are limited to determining the legal effect of the facts as presented in the amended application. We have to determine only the question whether the Territorial Board of Equalization has jurisdiction, in the lawful exercise of its powers for the purpose of equalizing valuations in the several counties, to raise or diminish valuations of property by classes, and whether as an incident to such equalization it may increase the aggregate of the valuations of property in the territory. The record does not present the question raised in the mandamus suit, whether the method employed by the Board
113 in the exercise of such power was legal.

The question as to the jurisdiction of the Board we answer in the affirmative. The demurrer to the amended application for writ of certiorari is sustained, and the writ heretofore issued is quashed.

FREDERICK S. NAVE, *A. J.*

We concur:
EDWARD KENT, *C. J.*
RICHARD E. SLOAN, *A. J.*

CAMPBELL, *A. J.* (dissenting):

I am unable to concur in that portion of the opinion of the majority of the court which holds that the Territorial Board of Equalization has power to increase or decrease valuations of classes of real estate, other than by those classes expressly recognized by the statutes.

The application for the writ discloses that the Board added to the assessed valuation of patented mines as a distinct class of property. Looking to the statutes to ascertain the classifications of property recognized therein for purposes of taxation, we find, first, the general classification into real and personal. (Paragraph 3831) By paragraph 3835, each of these two general classes is defined; the term "real estate" being declared "to mean and include the ownership of, or claim to, or possession of, or right of possession to, any land within the territory;" the term "personal property" to mean
114 and include all property not included in the term real estate.

Paragraph 3836 provides: "Land, and the improvements thereon, shall be separately assessed." By paragraph 3848 it is made the duty of every person owning or having the control of taxable property, to make a list of the same, and deliver it to the assessor. Paragraph 3849 provides: "The said list shall contain, first, his lands by section, or part of section, township, and range, and where such part of section is not a legal subdivision, or is unsurveyed, some other description sufficient to identify it, and his town lots, naming the

town in which they are situated, and their proper description by number of lot or block, or otherwise, according to the system of numbering in the town; second, the improvements on all such land and town lots; third, his personal property of every description, or property held by him or under his control as an agent, or in any fiduciary capacity." Paragraph 3861 makes it the duty of the assessor to prepare an assessment roll, and prescribes what it shall contain: He must set down in a separate column "all real estate taxable to each inhabitant, firm, incorporated company, or association, described by metes and bounds, or by common designation or name, if situate within the limits of any city or any incorporated town, describing by lots or fractions of lots; if without said limits, giving the number of acres as nearly as can conveniently be ascertained, and the location and township where situate; all improvements
115 upon public lands, describing as nearly as possible the location of such improvements."

Thus, we find that the legislature has classified real estate for the purposes of taxation, as follows: Town or city lots, improvements thereon, land outside of towns and cities, improvements thereon, improvements on public lands, and nowhere in the statutes are taxpayers, assessors, or boards of supervisors required, either in express terms, or, as I can perceive, by reasonable inference, to make or to enter upon the assessment rolls further or different classifications. Their full statutory duty is performed when they have placed upon the roll real estate and valuations, classified as the statute directs. For the use of the Territorial Board of Equalization, the clerks of the County Boards of Equalization are required by paragraph 3877, each to "make an abstract containing the whole number of acres of land, other than town or city lots, listed in the county, and the valuation thereof, and the value of the improvements thereon; the total valuation of town or city lots, and the value of the improvements thereon; the whole number of miles of railroad within the county, and the value thereof;" the whole number of horses, asses, cattle, sheep, swine, and goats, with their respective total values; "the gross amount of all other property." And by the same paragraph it is provided: "but the Territorial Board of Equalization is authorized to diminish or add to the above list, and to require such different or further matters to be returned as it may deem advisable."
116 It will be observed that paragraph 3877 preserves the classification of real estate heretofore indicated.

The majority of the court seem to rest the power of the Territorial Board to increase or decrease valuations by sub-classes of real estate, upon two propositions:

First, that there is no *prohibition* upon the assessors extending upon the rolls the description of land beyond that required in the statute, so as to designate its particular character; and therefore, having done so, the Board may act upon such sub-classifications; second, they find authority in paragraph 973 for the Boards of Supervisors to require assessors to sub-classify real estate upon the rolls, and in paragraph 3877, power in the Territorial Board to require the County Boards to make return as a distinct class, of any sub-classification appearing upon the assessment rolls.

I can see no force in the first contention. It is leaving to the various assessors to say upon what sub-classifications the Territorial Board shall act. Next year they may choose to do only what the law requires of them: place upon the assessment rolls lands outside of cities and towns by acres, without reference to whether they are cultivated or grazing, mineral or non-mineral. The clerks of County Boards of Equalization can only abstract what the rolls contain.

Therefore, the Territorial Board can not, under such condi-
117 tions, know from the abstracts that there are any mineral lands in the territory. I think I may without impropriety use for purposes of illustration an allegation appearing in the petitions for writs of mandamus now pending in this court, involving the proceedings of the Territorial Board. It appears that for the year 1905 but two of the assessors of the various counties placed upon the assessment rolls, as a separate class, improvements upon patented mines. It is a notorious fact that such improvements exist in nearly, if not all of the counties of the territory—a fact that is probably within the personal knowledge of every member of the Board of Equalization—yet the assessors were clearly within the law in returning them simply as improvements upon land, and the Board prevented from equalizing such assessments in the various counties.

Conceding, as found by the majority of the court, that the Supervisors may require the assessors particularly to describe upon the rolls the character of lands, it would seem to be a discretionary power. It is reading too much into the statute, to say that paragraph 3877 gives the Territorial Board supervisory power over the County Board in the exercise of their duties regarding the preparation of tax rolls. I construe the provision, "but the Territorial Board of Equalization is authorized to diminish or add to the above list, and to require such different or further matters to be returned as it may deem advisable," to empower the Board only to require the

clerk of the County Board to abstract by classes the property
118 included within "the gross amount of all other property."

I do not understand the majority opinion to hold that the Territorial Board may require the County Boards to require assessors to so describe lands upon the assessment rolls that they may be sub-classified, but only to hold that the assessors have so described it, the Territorial Board may require the County Boards to abstract the information the rolls contain. This leaves the Territorial Board without power to cause the information to be placed upon the rolls, should the Boards of Supervisors not choose so to direct the assessors. What we are seeking is the true intent and meaning of the legislature, and surely it can not be said that the legislature meant to leave the Territorial Board, in the exercise of such important powers, dependent upon the will of the various Boards of Supervisors.

The power to classify personal property, to some extent, is expressly given. The owner of taxable personalty is required to describe it to the assessor; and, from the provisions of paragraph 3877, the duty of the assessor to describe it on the assessment roll by classes

is clearly inferable. It may be doubted, however, whether he is required to sub-classify, for instance, horses; as work, saddle, and range. Upon this I do not think it necessary to express an opinion.

For the reasons indicated, I am of the opinion that the demurrer to the application should be overruled.

JOHN H. CAMPBELL, *A. J.*

119 I am unable to concur with my associates in the interpretation given the statutes in this case. I think the writ was properly issued, and the demurrer should be overruled.

I agree substantially with the views expressed by Mr. Justice Campbell herein.

FLETCHER M. DOAN, *A. J.*

(Endorsed:) No. 927. In the Supreme Court, Territory of Arizona. Copper Queen Consolidated Mining Company, Petitioner, vs. The Territorial Board of Equalization, Respondent. Opinion. On application for Writ of Certiorari. Filed Jan'y 20, 1906. S. M. Cullom, Clerk. By Angie B. Parker, Deputy.

120 In the Supreme Court of the Territory of Arizona.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari, Appellant,

against

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bowman, Frank H. Parker, John X. Woods, and Charles F. Solomon, Respondent.

TERRITORY OF ARIZONA, *County of Pima, ss:*

William Herring, being duly sworn, says: That he is one of the attorneys for the appellant, the Copper Queen Consolidated Mining Company, in the above entitled action; that this action was brought by the said appellant, as plaintiff, to review and set aside certain acts and proceedings of the Territorial Board of Equalization, defendant in said action, in increasing the valuations of certain property of plaintiff in Cochise County, Arizona, over and above the valuations of said property as fixed by the assessor and tax authorities of said county, for purposes of taxation for the year 1905; that such increased valuations of the property of plaintiff required the

121 payment by plaintiff of additional taxes upon its property in said county in said year 1905, of the sum of Eight Thousand and Fifty-two and 15/100 Dollars, which was the amount at issue in the determination of the said action, exclusive of the costs of the action.

WILLIAM HERRING.

Subscribed and sworn to before me this 28th day of March, 1906. My commission expires March 16, 1909.

[SEAL.] SELIM M. FRANKLIN,
Notary Public, Pima County, Arizona.

(Endorsed:) No. 927. In the Supreme Court of the Territory of Arizona. In the Matter of the Application of Copper Queen Consolidated Mining Company, a corporation, for a Writ of Certiorari, Appellant, against The Territorial Board of Equalization of the Territory of Arizona, etc., Respondent. Affidavit of Value. Filed M'ch 30, 1906, S. M. Cullom, Clerk.

122 In the Supreme Court of the United States.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari, Appellant,

against

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bowman, Frank H. Parker, John X. Woods and Charles F. Solomon, Appellee.

Assignment of Errors.

Before the Justices of the Supreme Court of the United States in the City of Washington comes the said Copper Queen Consolidated Mining Company, appellant, by William Herring, its attorney, and says: That in the record and proceedings aforesaid there is manifest error, in this, to-wit: In the judgment of the Supreme Court of the Territory of Arizona in favor of the appellee and against appellant, sustaining the demurrer of appellee to the application of appellant, and dismissing the application of appellant, and quashing the writ theretofore allowed in favor of appellant;

That there is error in this, to-wit: That by the record aforesaid it appears that the judgment aforesaid given was given for the said Territorial Board of Equalization against the said Copper
123 Queen Consolidated Mining Company whereas, by the law of the land the said judgment ought to have been given for the said Copper Queen Consolidated Mining Company and against the said Territorial Board of Equalization, and the said Copper Queen Consolidated Mining Company prays that the judgment aforesaid may be reversed, annulled, and held for nothing, and that it may be restored to all things which it has lost by occasion of the said judgment.

Dated March 30th, A. D., 1906.

WILLIAM HERRING,
Attorney for Appellant.

(Endorsed:) No. 927. In the Supreme Court of the Territory of Arizona. In the Matter of the Application of Copper Queen Consolidated Mining Company, a corporation, for a Writ of Certiorari, against The Territorial Board of Equalization of the Territory of Arizona, etc. Assignment of Errors. Filed March 30, 1906. S. M. Cullom, Clerk. By Angie B. Parker, Deputy.

124 In the Supreme Court of the Territory of Arizona.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari
against
THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bowman, Frank H. Parker, John X. Woods, and Charles F. Solomon.

Bond on Appeal.

Know all men by these presents, That the Copper Queen Consolidated Mining Company, a corporation, as principal, and S. W. French and G. B. Lee, residing in the County of Cochise, Territory of Arizona, as sureties, are hereby held and firmly bound to the Territory of Arizona, respondent in the above entitled action, in the penal sum of One Thousand Dollars, lawful money of the United States of America, to be paid to said respondent, for the payment of which sum well and truly to be made, we bind ourselves, our successors, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 27th day of Jan. A. D. 1906.

Whereas, the above named appellant has appealed to the Supreme Court of the United States from the judgment of the Supreme Court of the Territory of Arizona rendered at the January, A. D.
125 1906 Term thereof, sustaining the demurrer of respondent to the application of appellant, to reverse the judgment in the above action;

Now therefore, the condition of this obligation is such that if the above named appellant shall prosecute its appeal to effect, and answer all costs, if he fails to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

COPPER QUEEN CONSOLIDATED
By Its President, MINING COMPANY.
JAMES DOUGLAS.
S. W. FRENCH, [SEAL.]
G. B. LEE, [SEAL.]
Sureties.

TERRITORY OF ARIZONA, *County of Cochise, ss:*

S. W. French and G. B. Lee, sureties upon the within bond, being severally duly sworn, each for himself says: That he is worth double the sum of One Thousand Dollars, the amount specified in the foregoing bond which he has signed, over and above his just debts and liabilities.

S. W. FRENCH.
G. B. LEE.

Subscribed and sworn to before me this 27th day of January A. D., 1906.

J. H. DAVIS,
[SEAL.] *Notary Public, Cochise County, Arizona.*

126 The above bond being submitted to me, is approved both as to form, and sufficiency of sureties, this 30th day of March, A. D. 1906.

EDWARD KENT,
Chief Justice of the Supreme Court of Arizona.

(Endorsed:) No. 927. In the Supreme Court of the Territory of Arizona. In the Matter of the Application of the Copper Queen Consolidated Mining Company, a corporation, for a Writ of Certiorari against The Territorial Board of Equalization of the Territory of Arizona composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bowman, Frank H. Parker, John X. Woods and Charles F. Solomon. Bond on appeal. Filed M'ch 30, 1906. S. M. Cullom, Clerk. By Angie B. Parker, Deputy.

127 In the Supreme Court of the Territory of Arizona.

No. 927.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari, Plaintiff,

against

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bowman, Frank H. Parker, John X. Woods, and Charles F. Solomon, Defendant.

The Demurrer in the above entitled cause having been argued, submitted and determined in this Court at the January Term, A. D., 1906, thereof, and a judgment having been, on the 20th day of January, A. D., 1906, by this Court rendered in said cause in favor of the defendant and against the plaintiff, and the plaintiff desiring to prosecute an appeal to the Supreme Court of the United States from the judgment of this Court in this case, and having applied for a statement of facts in this — in the nature of a special verdict, pursuant to the Act of Congress in such case made and provided;

Now therefore, this Court, on this 30th day of March, A. D., 1906, the same being a day of the January A. D. 1906 Term of said Court, makes and files the following statement of facts, to-wit:

128 That on the 21st day of September, 1905, this action was commenced by an application to an Associate Justice of our Supreme Court for a Writ of Certiorari against the defendant to review and set aside its action and proceedings at its meeting on the 17th day of August, A. D. 1905, in changing and increasing the valuations for taxation of certain property of the plaintiff in Cochise

County, Arizona, fixed by the Assessor and Board of Equalization of said County for the year 1905, and returned by said Board to defendant;

That a Writ of Certiorari was thereupon directed by an Associate Justice of this Court to be issued, and was issued to defendant, returnable after due service, to our Supreme Court on the 17th day of November, A. D. 1906;

That to this application defendant demurred;

That on the 17th day of November, A. D. 1906, plaintiff filed an Amended Application alleging substantially the same cause of action;

That on said 17th day of November, defendant demurred to said Amended Application;

That on said 17th day of November, the parties appeared before our Supreme Court, and the hearing upon said demurrer was adjourned to the January Term 1906 of said Court;

That at said January Term of our Supreme Court, to-wit: on the — day of January, A. D. 1906, the said demurrer was finally argued and submitted;

129 That, on the 20th day of January of said Term our Supreme Court rendered its judgment sustaining the demurrer to the amended application for a writ of certiorari, and quashing the writ theretofore issued, and judgment accordingly was duly entered in said cause.

EDWARD KENT,
Chief Justice of the Supreme Court of Arizona.

(Endorsed:) No. 927. In the Supreme Court of the Territory of Arizona. In the Matter of the Application of Copper Queen Consolidated Mining Company, a corporation, for a Writ of Certiorari, Plaintiff, against The Territorial Board of Equalization of the Territory of Arizona, etc., Defendant. Statement of facts. Filed M'ch 30, 1906, S. M. Cullom, Clerk. By Angie B. Parker, Deputy.

130 In the Supreme Court of the Territory of Arizona.

No. 927.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari, Applicant,

against

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bauman, Frank H. Parker, John X. Woods, and Charles F. Solomon, Respondent.

Be it remembered that heretofore and on to-wit the 17th day of November, A. D., 1905, the same being one of the regular juridical days of the January Term, A. D., 1905, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

No. 927.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari, Applicant,

against

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bauman, Frank H. Parker, John X. Woods, and Charles F. Solomon, Respondent.

This cause coming on for hearing was argued by Mr. E. S. Clark, for Respondent.

131 The time for adjournment having arrived, it is ordered that argument in this cause be continued until tomorrow.

And afterwards and upon to-wit the 18th day of November, A. D., 1905, the same being one of the regular juridical days of the January Term, A. D., 1905, of said Court, the following order, *inter alia,* was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to wit:

No. 927. Title of Cause.

At this day come again the parties hereto by their attorneys respectively, and argument resumed by Attorney General Clark for Respondent and Mrs. Sorin for Applicant, and cause ordered submitted.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:

No. 927. Title of Cause.

On motion of Mr. E. S. Clark, attorney for Respondent herein, it is ordered that he have until Monday next, in which to file Return to Writ of Certiorari.

On motion of Mr. E. S. Clark, it is further ordered that Respondent have 5 days in which to file reply brief.

132 On motion of Mr. William Herring, attorney for Applicant herein, it is ordered that he have permission to file briefs to-day.

And afterwards and upon to-wit the 9th day of January, A. D. 1906, the same being one of the regular juridical days of the January Term, A. D., 1906, of said Court, the following order, *inter alia,* was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:—

No. 927. Title of Cause.

On motion of Attorney General, E. S. Clark, attorney for Respondent herein, it is ordered that he be granted leave to withdraw his typewritten briefs filed herein, and substitute the printed brief now presented.

And afterwards and upon to-wit the 13th day of January, A. D., 1906, the same being one of the regular juridical days of the January Term, A. D., 1906, of said Court, the following order, *inter alia*, was had and entered of record in said Court, in said cause, which said order in in words and figures, as follows, to-wit:—

No. 927.

The Court desiring some additional information in the cases known as the Tax Cases, Nos. 927, 934, 935, 936, 937, 939,
133 940 and 941, respectively, they came on this day for hearing, and were argued by Mr. Wm. Herring, Mr. E. E. Ellinwood and Mr. C. L. Rawlins, and ordered submitted.

It is further ordered that the Clerk of this Court notify the attorneys in above cases when the decision is to be rendered.

And afterwards and upon to-wit the 20th day of January, A. D., 1906, the same being one of the regular juridical days of the January Term, A. D., 1906, of said Court, the following order *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:—

No. 927.

In the Matter of the Application of THE COPPER QUEEN CONSOLIDATED MINING COMPANY, a Corporation, for a Writ of Certiorari
against
THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA, Composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bowman, Frank H. Parker, John X. Woods, and Charles F. Solomon.

Judgment.

A writ of certiorari in this cause having been allowed by an Associate Justice of this Court, and therafter an amended application for such writ having been filed, and the Territorial Board of Equalization having appeared in said matter by E. S. Clark, Attorney General of the Territory of Arizona, and a demurrer having been filed herein by said Attorney General, to the Amended Appli-
134 cation herein, on the ground that the said application did not state facts sufficient to constitute a cause of action, and said matters coming on to be heard upon said amended application and

the demurrer thereto, and the same having been duly argued and submitted, and by the Court taken under consideration, and the Court having considered the same and being fully advised in the premises:

It is ordered that said demurrer be sustained, and the Writ heretofore issued be, and the same is, hereby quashed.

It is further ordered, adjudged and decreed that the Respondent herein, do have and recover of and from the Copper Queen Consolidated Mining Company, its costs incurred herein, taxed at ——.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:

No. 927. Title of Cause.

Comes now the Applicant herein by its attorney, William Herring, Esq., and gives notice of appeal from the Judgment of this Court to the Supreme Court of the United States, and moves the Court that the appeal be allowed.

It is ordered by the Court that said motion be granted, and the appeal be and the same is hereby allowed.

It is further ordered that the amount of the Board on
135 Appeal be fixed in the sum of One Thousand ($1,000.) dollars.

And afterwards and upon to-wit the 23rd day of January, A. D., 1906, the same being one of the regular juridical days of the January Term A. D., 1906, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

No. 927. Title of Cause.

In this cause, on motion of Wm. Herring, Esq., It is Ordered that he be granted leave to file Affidavit of Value.

136 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *Territory of Arizona, ss:*

I, Shelby M. Cullom, Clerk of the Supreme Court of the Territory of Arizona, do hereby certify that the foregoing pages numbered from 1 to 135, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the Matter of the Application of the Copper Queen Consolidated Mining Company, a corporation, for a Writ of Certiorari, against The Territorial Board of Equalization of the Territory of Arizona, composed of Wesley A. Hill, Chairman, and Thomas F. Wilson, Charles Bowman, Frank H. Parker, John X. Woods, and Charles F. Solomon, as the same remain of record and on file in my office.

I further certify that the Citation attached hereunto, is the original Citation issued by said Supreme Court of the Territory of Arizona.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Supreme Court, at Phœnix, Arizona, this 24th day of April, 1906.

[Seal Supreme Court of Arizona.]

SHELBY M. CULLOM,
Clerk Supreme Court of Arizona.

137 UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Territorial Board of Equalization of the Territory of Arizona, Appellee, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, within sixty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the Supreme Court of the Territory of Arizona, wherein the Copper Queen Consolidated Mining Company is appellant and you are the appellee, to show cause, if any there be, why the judgment rendered against the appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 30th day of March, in the year of our Lord one thousand nine hundred and six.

EDWARD KENT,
Chief Justice Supreme Court of Arizona.

Service of the within citation and receipt of a copy thereof admitted this 23d day of April, 1906.

E. S. CLARK,
Attorney for Appellee.

138 [Endorsed:] No. 927. In the Supreme Court, of the Territory of Arizona. In the Matter of the Application of the Copper Queen Consolidated Mining Co., a corporation, for a Writ of Certiorari, against The Territorial Board of Equalization of the Territory of Arizona, etc. Citation. Filed April 26, 1906 S. M. Cullom Clerk.

Endorsed on cover: File No. 20,236. Arizona Territory supreme court. Term No. 280. Copper Queen Consolidated Mining Company, appellant, *vs.* The Territorial Board of Equalization of the Territory of Arizona. Filed May 1, 1906. File No. 20,236.

FILE COPY.

In The

Supreme Court

of the

United States

Office Supreme Court, U. S.
FILED.
FEB 5 1907
JAMES H. McKENNEY
CLERK

OCTOBER TERM, 1906

COPPER QUEEN CONSOLIDATED MINING COMPANY,
Appellant,

vs.

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA,
Appellee.

No. 280

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA

BRIEF ON BEHALF OF APPELLANT

WILLIAM HERRING,
SARAH HERRING SORIN and
EVERETT E. ELLINWOOD,
Attorneys for Appellant.

In The

Supreme Court

of the

United States

OCTOBER TERM, 1906

COPPER QUEEN CONSOLIDATED MINING COMPANY,
Appellant,

vs.

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA,
Appellee.

No. 280

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA

BRIEF ON BEHALF OF APPELLANT

STATEMENT.

"The Copper Queen Consolidated Mining Com-
"pany made application that a writ of certiorari

"should issue out of this Court by an Associate "Justice thereof, directed to the Territorial Board "of Equalization, requiring that Board to certify "certain records to this Court, and show cause why "certain acts and proceedings complained of in "said application should not be declared void and "vacated. Upon the application, on September "22, 1905, a writ was issued by one of the As-"sociate Justices, returnable before the full bench "of this Court on the 17th day of November, "1905. On November 16, 1905, petitioner filed "in this Court its amended application for a writ "of certiorari.

"The Board of Equalization made return in "compliance with the writ, but interposed a de-"murrer to the amended application.

"By consent of the parties, expressed in open "Court, the right of the petitioner to the writ was "argued before the full bench upon this demurrer. "Therefore, we may with propriety consider the "questions raised by demurrer as if no writ had "been issued, and determine whether, upon the "facts set forth in the amended application thus "conceded to be true, the petitioner is entitled to "relief.

(Statement by Supreme Court of the Territory, Rec. p. 61.)

The amended application for writ of certiorari is as follows (Rec. pp. 7-11):

"Territory of Arizona, County of Cochise, ss.

"Walter Douglas being duly sworn, deposes "and says: That the Copper Queen Consolidat-"ed Mining Company, the applicant herein, is a

"corporation duly created and existing by virtue of "the laws of the State of New York, and is duly "authorized to conduct its corporate business in "the Territory of Arizona;

"That deponent is the General Manager and "duly qualified and appointed resident corporate "agent of said Company, and resides in the City "of Bisbee, in the County of Cochise, said Terri- "tory, and makes this affidavit in behalf of said "applicant;

"That said corporation is a resident and tax- "payer of said Cochise County, and as such is "beneficially interested in this application and the "matters herein set forth and complained of;

"That the said applicant is the owner of a large "amount of real and personal property situate in "said County which is used and required in con- "ducting its corporate business in said County, "which property is subject to assessment and taxa- "tion for County and Territorial purposes;

"That said property includes certain patented "mines, certain work horses and certain saddle "horses situate in said county which were returned "by said applicant to the Assessor of said County "for taxation for the year 1905; that said proper- "ty was thereafter listed for taxation by said As- "sessor upon the assessment roll of said County "for said year, and is subjected to taxation for "County and Territorial purposes for said year; "that said property of said applicant, said Copper "Queen Consolidated Mining Company, is in- "cluded within the property the assessed valuation "of which has been increased by the unlawful ac- "tion of the Territorial Board of Equalization "hereinafter complained of and alleged;

"That the persons above named constitute, and "at all times hereinafter referred to have consti- "tuted the Territorial Board of Equalization of "the Territory of Arizona:

"That on the 14th day of August, 1905, as "deponent is informed and believes and therefore "alleges, the said Board met at the office of the "Territorial Auditor of said Territory, at Phoenix, "and continued in session from day to day until "after the 17th day of August, 1905;

"Deponent alleges that while said Board was "so in session on said 17th day of August, 1905, "having under examination the various assessments "and abstracts of assessment rolls returned to it "from the various counties in the Territory, so "far as regards the Territorial tax, and having "under consideration the question whether the "valuation of property in each County bears a fair "relation or proportion to the valuation in all "other counties in the Territory, and with the al- "leged purpose of equalizing the rate of assess- "ment in the various counties, the same being a "judicial matter, and the said Board exercising ju- "dicial functions in that behalf, the said Board "on the 17th day of August, without authority of "law and in excess of the jurisdiction conferred on "it by law, by order, added to the assessed val- "uation of patented mines in the County of Co- "chise for the year 1905, which had been thereto- "fore fixed by the Assessor of said County and the "Board of Equalization thereof, and returned in "the abstract of the Assessment roll of said Coun- "ty above referred to, at $223,018.47, 1500 per "cent. thereof, which was an increase of $3,345,- "277.05;

"That the said Board in like manner, and without authority of law and in excess of its jurisdiction, on said 17th day of August, 1905, by order, added to the valuation of work horses in said County for the purpose of taxation of the same for the year 1905, which had been theretofore fixed by the Assessor of said County and the Board of Equalization thereof, and returned in the abstract of the assessment roll of said County above referred to, at $50,211.00, 19 per cent. thereof, which was an increase of $9,989.00;

"That said Board in like manner, and without authority of law, and in excess of its jurisdiction, on said 17th day of August, 1905, by order, added to the valuation of saddle horses in said County for the purpose of taxation of the same for the year 1905, which had been theretofore fixed by the Assessor of said County and the Board of Equalization thereof, and returned in the abstract of the assessment roll of said County above referred to, at $20,390.00, 31 per cent. thereof, which was an increase of $6,350.00;

"Deponent is informed and believes, and therefore alleges, that said Territorial Board of Equalization did not change the assessed valuation of any other class of property in said Cochise County for the purpose of taxation of the same for the year 1905, as fixed by said Assessor and said County Board of Equalization and returned in said abstract of assessment roll, except the assessed valuation of improvements on unpatented mines, which said assessed valuation was increased by said Territorial Board of Equalization by adding thereto 1000 per cent. of said valuation;

"Deponent further alleges that while said Ter-

"ritorial Board of Equalization was so in session "on said 17th day of August, 1905, for the pur- "pose aforesaid, the said Board, without authority "of law and in excess of the jurisdiction conferred "on it by law, by order increased the assessed val- "uation of some special class or classes of property "in each and every other county of said Territory, "over and above the assessed valuation thereof for "the year 1905, as fixed by the assessors and boards "of equalization of the respective counties and re- "turned in the abstract of assessment rolls from "said counties;

"Deponent alleges that by so increasing the val- "uation of said special classes of property in said "counties, said Territorial Board of Equalization "increased the aggregate valuation of property in "the following named counties (including each "and every county in the Territory) over and "above the aggregate valuations of property there- "in as fixed by the respective assessors and boards "of equalization of said counties for the year 1905, "and returned in the abstracts of assessment rolls "from said counties, as follows, to-wit:

"County.	"Amounts of Increase by Territorial Board of Equalization.
"Apache	$ 6,696.30
"Coconino	81.37
"Cochise	3,370,216.60
"Graham	2,158,130.64
"Gila	996,731.70
"Maricopa	55,500 81
"Mohave	597,597.98
"Navajo	2,336.50
"Pinal	13,945.54

"Pima	803,745.08
"Santa Cruz	323,565.00
"Yuma	77,385.00
"Yavapai	1,148,127.77
	$9,554,060.29

"Deponent alleges that in no instance did said "Territorial Board of Equalization diminish the "aggregate valuation of property in any county as "fixed by the assessor and board of equalization "of said county for the year 1905 and returned in "the abstract of assessment roll of said county;

"That by the said action of said Territorial "Board of Equalization in so increasing the said "aggregate valuation of property in each and every "county in this Territory, the said Board unlaw- "fully increased the aggregate valuation of prop- "erty in the Territory for the purposes of taxation "of the same $9,554,060.29 over and above the "sum of the aggregate valuations of the several "counties therein as fixed, for the year 1905, by "the assessors and boards of equalization of the "respective counties and returned to the Territo- "rial Auditor in said abstracts of assessment rolls "of said counties, as will more fully and at large "appear by reference to the tabulated statement "above set forth;

"Deponent alleges that each and all of the said "changes so made in said assessed valuation of "said property in said Cochise County were by the "said Board of Equalization certified to the Board "of Supervisors of Cochise County by the Chair- "man and Secretary of said Board of Equaliza- "tion; that, as deponent is informed and believes

"and therefore alleges, the Board of Supervisors "of said Cochise County thereafter ordered the "said changes made by said Territorial Board of "Equalization in said assessed valuation of prop- "erty in said County to be placed on the assess- "ment roll of said County for said year 1905;

"Deponent alleges that said last named Board "caused the assessed valuation of the said patent- "ed mines, work horses and saddle horses owned "by applicant herein, and which has been returned "for taxation and listed on said assessment roll for "1905 as aforesaid, and were thereon assessed to "applicant for said year (which assessed valuation "had been theretofore fixed by said Assessor and "the Board of Equalization of said County as "aforesaid) to be changed on said assessment roll "to conform to the said changes made in the as- "sessment of said respective classes of property by "said Territorial Board of Equalization;

"That the duplicate assessment roll of said "County for the year 1905, embodying said "changes, and with the warrant of the Chairman "of the Board of Supervisors of said County "thereto affixed, was thereafter delivered to the "Tax Collector of said County, and that the said "Tax Collector has made demand upon said ap- "plicant for the payment of the taxes appearing "thereon to be due;

"That by the action of said Territorial Board "of Equalization in making the increases aforesaid, "the assessed valuation of the property owned by "and assessed to said applicant in said County, for "purposes of taxation for said year 1905, was un- "lawfully and without authority of law changed "and increased from the assessed valuation thereof

"for said year as fixed by the Assessor and Board "of Equalization of said County and returned in "said abstract of assessment roll of said County "as follows, to-wit:

"Patented Mines from $56,513.40 to $904,-214.40.

"Work Horses from $1,120.00 to $1,33[illegible]0.

"Saddle Horses from $120.00 to $157.20.

"Thereby making a total increase of $847,-"951.00 in the assessed valuation of applicant's "property in said County for purposes of taxation "for said year 1905 over and above that fixed by "said Assessor and Board of Equalization of said "County for said year and returned in said ab-"stract of said assessment roll, upon which in-"crease applicant is required to pay taxes for said "year 1905;

"That in so proceeding to increase the aggre-gate valuation of property in the Territory as "aforesaid and in so increasing the assessed valua-"tion of special classes of property in said Cochise "County and in the other said counties of said "Territory, said Territorial Board of Equalization "was exercising judicial functions and exceeded its "jurisdiction;

"That the said applicant has no appeal nor any "plain, speedy and adequate remedy to obtain re-"lief from said unlawful acts of said Board, ex-"cept by writ of certiorari to review and set aside "and vacate the said proceedings of said Board.

"Wherefore, the said applicant prays that a writ "of certiorari may be forthwith issued out of this "Court by an Associate Justice thereof directed to "said Territorial Board of Equalization command-

"ing and requiring said Board to certify its record, "proceedings and minutes of said meeting on said "17th day of August, and also the several ab- "stracts of assessments furnished to and filed with "said Board by the respective Boards of Supervis- "ors of the several counties of this Territory show- "ing the values of property in said respective coun- "ties prior to the raise and increase by said Terri- "torial Board herein complained of, and also all "other records and papers which in any manner "relate to or exhibit the acts and proceedings of "said Board herein complained of and referred to, "to our Supreme Court at the City of Phoenix on "the 17th day of November, A. D., 1905, and "that the said Territorial Board of Equalization "then and there show cause to our Supreme Court, "if any it shall have, why its acts and proceedings "herein complained of should not be declared void "and vacated and set aside, and that said corpora- "tion have such further or other order or relief as "is meet and proper in the premises.

"WALTER DOUGLAS.

'Subscribed and sworn to, etc.

SPECIFICATION OF ERRORS.

The judgment of the Supreme Court of the Territory of Arizona sustaining the demurrer of the appellee to the application of appellant and dismissing the application and quashing the writ heretofore allowed in favor of appellant, is manifestly erroneous, in this, that by the record aforesaid it appears that the Territorial Board of Equalization in performing the acts alleged and complained of in the application exceeded its jurisdiction, and to sustain the specifica-

tion of errors the appellant presents the following propositions:

I.

THE TERRITORIAL BOARD OF EQUALIZATION MAY, FOR THE PURPOSE OF ADJUSTING AND EQUALIZING, INCREASE THE AGGREGATE VALUE OF ONE COUNTY AND DECREASE THAT OF ANOTHER, BUT IT HAS NO POWER TO INCREASE THE AGGREGATE VALUATION OF PROPERTY IN THE TERRITORY ABOVE THE VALUATIONS RETURNED BY THE BOARDS OF SUPERVISORS OF THE SEVERAL COUNTIES.

II.

THE TERRITORIAL BOARD OF EQUALIZATION IN EQUALIZING AND ADJUSTING PROPERTY VALUATIONS BETWEEN THE SEVERAL COUNTIES HAS NO POWER TO INCREASE OR DIMINISH THE VALUATIONS OF CERTAIN KINDS, CLASSES, SUB-CLASSES OR GRADES OF PROPERTY WITHIN ANY COUNTY. THE TERRITORIAL BOARD MUST DEAL WITH THE RESPECTIVE VALUATIONS AS RETURNED BY THE COUNTIES AS ENTIRETIES BY MAKING SUCH CHANGES IN EACH COUNTY VALUATION AS A WHOLE AS WILL RELATIVELY EQUALIZE THE ENTIRE PROPERTY VALUES IN THE DIFFERENT COUNTIES.

ARGUMENT.

POINT I.

The Territorial Board of Equalization is wholly a creature of statute and is of special and limited jurisdiction. It is essential to the validity of its acts that they should be authorized by some express pro-

vision of the statute, otherwise they are absolutely null and void.

Central Pacific R. R. Co. vs. Evans, 111 Fed. Rep., 79.

1 *Cooley on Taxation,* p. 772, 3rd Edition.

The statutory authority under which the Territorial Board of Equalization may act is found in Revised Statutes of Arizona, 1901, paragraphs 3877 and 3880, and paragraph 3879 as amended by Act No. 23 Laws 1903, the same being re-enacted *verbatim* from paragraphs 2655, 2657 and 2658, Revised Statutes of Arizona, 1887. (Except as the amendment of paragraph 3879.) In the revision of 1887 paragraphs 2655, 2657 and 2658 were adopted almost *verbatim* from paragraphs 2279, 2281 and 2282 of the General Laws of Colorado, 1877,, the same being identical with paragraphs 2863, 2878 and 2879 of the Revised Statutes of Colorado of 1883, all of which will be clearly seen by the following comparison (the language of the respective statutes wherein they differ being for convenience printed in italics):

Pars. 2279, 2281 and 2282 General Laws of Colorado. 1877	Pars. 3877, 3879 and 3880 Revised Statutes Arizona 1901.
2279. Sec. 40. Immediately after the *assessment roll is completed, the county* clerk shall make *out* an abstract *thereof* containing the whole number of acres of land listed in the county,	3877. (Sec. 47.) Immediately after the *adjournment of the board of equalization in July, the* clerks *thereof* shall make an abstract *of the assessment roll,* containing the whole number of acres

and the valuation thereof; the whole number of miles of railroad in the county, and the value thereof; the total valuation of town lots; the whole number of horses, and their total value; the whole number of mules, and their total value; the whole number of asses, and their total value; the whole number of cattle, and their total value; the whole number of sheep, and their total value; the whole number of swine, and their total value; the whole number of goats, and their total value; *the whole number of musical instruments, and their total value; the total value of clocks, watches, jewelry, gold and silver plate;* the gross amount of all other property, *with money and credits,* which abstract the clerk shall make out in duplicate, and transmit one copy forthwith to the auditor *of the State;* but the *State* board of equalization is authorized to diminish or add to the

of land, *other than town or city lots,* listed in the county, and the valuation thereof, *and the value of the improvements thereon;*. the total valuation of town *or city* lots *and the value of the improvements thereon;* the whole number of miles of railroad *with*in the county, and the value thereof; the whole number of horses, and their total value; the whole number of mules, and their total value; the whole number of asses, and their total value; the whole number of cattle, and their total value; the whole number of sheep, and their total value; the whole number of swine, and their total value; the whole number of goats, and their total value; the gross amount of all other property, *and the total valuation of all taxable property;* which abstract the clerk shall make out in duplicate, *filing one copy in the office of the board of supervisors,* and transmit*ting*

above list, and to require such different or further matters to be returned as it may deem advisable.

one copy forthwith to the *territorial* auditor; but the *territorial* board of equalization is authorized to diminish or add to the above list, and to require such different or further matters to be returned, as it may deem advisable, *and if the said board of supervisors or clerk shall fail to forward to the territorial auditor the said abstract, the territorial board of equalization must obtain the abstract or so much thereof as is necessary from other and reliable sources.*

2281. Sec. 42. The *state* board of equalization shall consist of the *governor, secretary,* auditor, *treasurer of the state and the attorney general.* They shall sit at the office of (the) *secretary of the state, at the capital,* on the second Monday *of* August of each year, and are hereby authorized and required to examine the various assessments, *as* far as regards the *state*

3879. (Sec. 49) (As amended by Act 23, Laws 1903.) The *Territorial* Board of Equalization shall consist of the *Territorial Auditor, who shall be Chairman of the Board, and one member from each of the Judicial Districts of the Territory, to be appointed from said Districts by the Governor, by and with the advice and consent of the Legislative Council, for*

tax, and equalize the rate of assessment in the various counties, whenever they are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors.

the term of two years, or until their successors shall be appointed and qualified, and they shall before entering upon the duties of their office take the statutory oath of office and file the same in the office of the Secretary of the Territory. The members of said board shall receive in full of all compensation ten dollars per diem for the days actually in session, and twenty cents per mile, mileage, in going to and from the place of meeting, said mileage to be computed by the nearest practicable route (no constructive mileage shall be allowed). In case of a vacancy in said Board, the Governor shall fill such vacancy by appoint- a suitable person therefor from the Judicial District from which the vancancy occurred. The Governor shall at the end of each session of said Board, audit the account of the members thereof for per diem and mileage, and

the same shall be paid out of the general fund of the Territory upon warrants drawn by the Territorial Auditor upon the Teritorial T r e a s u rer therefor. Provided, that no member of said Board shall receive a per diem for more than twenty days in each year. If any of the said members of the Territorial Board of Equalization shall fail to attend any of the meetings of said Board, as required by law, it shall be the duty of the Governor to appoint a competent person or persons to act in the place of said absent member or members, during his or their absence, and the said person so appointed shall have the same powers and authority, with the same compensation, as if regularly constituting said Board. They shall sit at the office of the *Territorial Auditor* on the second Monday *in* August of each year, *for the purpose of*, and *they* are hereby authorized

and required to examine the various assessments, *so* far as regards the *Territorial* tax, and equalize the rate of assessment in the various counties whenever they are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different Assessors *and Boards of Equalization. The said Board shall continue in session until the business before it shall be disposed of, and shall have access to and make use of all records in the office of the Territorial Audtor and Territorial Treasurer, which will aid them in the disposition of such business. . The said Board shall keep a record of the business transacted by it, and are authorized to employ a secretary, at a compensation of five dollars per day while engaged in actual service, such compensation not to exceed the sum of three hundred dollars in any one year; his account for*

compensation shall be audited by the chairman of said Board from time to time, as such service shall be performed by said secretary, and shall be paid in the same manner as the compensation of the members of said Board is paid. A sum not exceeding one hundred dollars per year is hereby annually appropriated from the general fund for the purchase of necessary supplies and for the payment of incidental office expenses of said Board, and the Territorial Auditor shall draw his warrants in payment of same upon the order of the Board, and the Territorial Treasurer is hereby directed to pay said warants as other warrants are paid.

2282. Sec. 43. Said Board shall ascertain whether the value of *real estate* in each county bears a fair relation or proportion to the valuation in all other counties

3880. (Sec. 50.) *The* said board shall ascertain whether the valuation of *property* in each county bears a fair relation or proportion to the valuation in all other

of the *state*, and on such examination they may increase or diminish the *aggregate* valuation of *real estate* in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of *real estate* in the *state;* but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as returned by the *clerks* of the several counties.

counties *in* the *territory*, and on such examination they may increase or diminish the valuation of *property* in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of *property* in the *territory;* but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as returned by the *boards of supervisors* of the several counties. *And said board shall at the same time fix the rate of taxes for territorial purposes which is to be levied and collected in each county.*

Prior to the adoption by the Legislature of Arizona of Paragraphs 2279, 2281 and 2282 of the General Laws of Colorado, this statute was given judicial construction by the Supreme Court of Colorado in the case of the People *ex rel.*, Crawford vs. Lathrop, 3 Colorado, 428, in which the court says, at page 462:

"'All taxes shall be uniform upon the same "class of subjects within the territorial limits of "the authority levying the tax.' It was to meet

"this difficulty and accomplish this end that the "State Board of Equalization was created, with "powers to *adjust* and *equalize*. For this pur- "pose the Board is required by statute (General "Laws, Sec. 42, p. 756) to 'examine the various "assessments as far as regards the State tax, and "equalize the rate of assessments in the various "counties whenever they are satisfied that the "scale of valuation has not been adjusted with "reasonable uniformity by the different assessors.' "By section 43 the Board is required to ascertain "whether the 'valuation of real estate in each "county bears a fair relation or proportion to the "valuation of all other counties of the State, and "on such examination they may increase or dimin- "ish the aggregate valuation of real estate in any "county as much as in their judgment may be "necessary to produce a just relation between all "the valuations of real estate in the State, but in "no instance shall they reduce the aggregate valu- "ation of all the counties below the aggregate "valuation as returned by the clerks of the several "counties.' Under these sections it is claimed "that the Board has the power to increase the "aggregate valuation of the real and personal "property of the State over and above the aggre- "gate valuation as returned by the clerks of the "different counties.

"This claim, if well founded, makes them prac- "tically a board of assessors, with power to fix "and determine values as well as to adjust and "equalize valuations.

"In all cases of taxes by valuation an assessment "is indispensable and primary. It lies at the "foundation of the proceeding. The term as

"commonly employed embraces both the listing of "taxable property and the determination of its "value. This assessment is not only indispens- "able, but in making it the provisions of the "statute under which it is made must be observed "with particularity. If this were not compul- "sory; if the officers were at liberty to disregard "important provisions of the statute in this initia- "tory step, the chief protection which the law has "intended for individuals in tax cases would be "removed. (Cooley on Taxation, pp. 259-60).

"Our statutes provide (General Laws, p. 742, "Sec. 4) that 'all property, both real and personal, "within the state, not expressly exempt by law, "shall be subject to taxation.' They further pro- "vide (General Laws, p. 747, Sec. 14) that 'all "taxable property shall be listed and valued each "year, and shall be assessed at its full cash value.' "Let us then inquire where, under our Constitu- "tion and laws, this important power of determin- "ing the valuation of taxable property as a basis "of taxation is lodged.

"The Constitution provides (Sec. 8, Art. 14) "for the election in each county, each alternate "year, of a county assessor. He is thus a con- "stitutional officer, and though his duties are left "unprescribed, the essential duties of an assessor "must be presumed to have been contemplated. "Is there not here a plain intention on the part "of the people to preserve local control over the "valuation of property for purposes of taxation? "This local control existed under the territorial "form of government under which they had been "living, and is this not an effort to secure it be- "yond contingency? In view of this provision

"and of other constitutional limitations it may be "gravely doubted whether it is competent for the "legislative authority to take from county assess- "ors the substantial control of valuations of prop- "erty for State taxation, and vest it in a central "authority. The question here presented is not "what the legislative authority could do in this "respect, but what it has done.

"Following the provisions of the Constitution "our statutes (General Laws, Sec. 121, p. 247) "provide for the election of a county assessor in "each county of the State, who shall give bond to "the people of Colorado and subscribe an oath "for the faithful performance of his duties as "assessor.

"Section 25 (General Laws, p. 750) requires "the county commissioners of each county to fur- "nish the assessors suitable blank forms for assess- "ment, and such instructions as shall be necessary "to secure full and uniform assessments and re- "turns.

"Section 21 (General Laws, p. 749) requires "the assessor to leave with each resident of his "county, etc., a notice requiring him to make out "and return to the assessor a list of his property "subject to taxation, and to leave him a blank "form upon which the list may be made. This "return by another section is to be under oath.

"Section 23 (General Laws, p. 750) provides "for the valuation of certain property by the "owners.

"Section 32 (General Laws, p. 753) provides "that all property shall be valued by the assessor, "except such as may be required to be valued by

"the owner, in section 23 of the act.

"Section 11 (General Laws, p. 744) provides "that the assessor shall assess all personal prop- "erty situate or being in his county.

"Section 27 (General Laws, p. 761) provides "for the assessor to assess in case of failure of "owner to give in his list according to law.

"Section 33 (General Laws, p. 753) provides "for the delivery of the assessment roll by the "assessor to the county clerk.

"Section 37 (General Laws, p. 754, provides "an oath to be taken by the assessor and attached "to the assessment rolls, to the effect that he has "made diligent inquiry and examination to ascer- "tain all property within his county subject to taxa- "tion; that he has assessed it equally and uni- "formly according to his best judgment and in- "formation and belief at its full cash value; that "he has faithfully complied with all duties im- "posed on the assessor by the revenue laws; that "he has not imposed any unfair assessment "through malice nor allowed any one to escape a "just and equal assessment through favor.

"Section 38 (General Laws, p. 754) provides "that the county commissioners of each county "shall constitute a board of equalization for the "correction and completion of the assessment "rolls, with power to supply omissions in the "assessment rolls, and for the purpose of equaliz- "ing the same, to increase, diminish or otherwise "alter and correct any assessment or valuation. "It provides in case of change of the assessment "of any tax payer, that he shall be notified and

"have a hearing before the board. It constitutes "them a *quasi* court to hear any and all complaints "of the tax payer touching the valuation or listing "of his property, with full power to adjust and "correct the assessment roll as in their judgment "they may deem proper and right, thus adding "statutory duties to their constitutional duty 'to "adjust and equalize.' Other sections of the law "might be cited, but those mentioned suffice for "our purpose. We find here a complete system, "with well defined and minutely prescribed rules "guarding the property right of the citizen; "guarding equally the revenue necessities of the "State, acting through the instrumentalities of "owners and the assessors chosen by the electors "of the several counties, listing, valuing and re-"turning taxable property under the sanction of "an oath, with the board of county commissioners "acting as a board of appeal and review, all for "the one purpose of ascertaining, determining and "fixing the value of taxable property in each "county of the State as a basis of taxation. The "statute provides for the transmission of these "assessment rolls of the county to the board of "equalization, and contemplates that one assess-"ment shall be made for both State and local "taxes. * * * * *

"The assessor is thus made an integral part of "the revenue system, which not only thus specifies "and defines his duties, but assigns to other officers "and boards equally well defined and separate "duties. The assessor shall list and value. The "board of commissioners shall equalize, adjust, "increase and diminish, supply omissions and cor-"rect errors and hear complaints. The county

"clerk shall prepare assessment rolls and compute "and extend the tax therein. The State board "of equalization shall adjust and equalize valua- "tions, and lastly, the county treasurer shall collect "the tax. In seeking for legislative intent, refer- "ence must be had not only to the form and "phraseology of the particular section under con- "sideration, but any part must be viewed in con- "nection with the whole, so if possible to harmon- "ize and give effect to the whole.

"Looking then to the provisions of the Consti- "tution and the statute, we are clearly of the opin- "ion that the power to fix and determine the valu- "ation of taxable property is lodged by them in "the assessor and the board of county commission- "ers of the several counties of the State, and that "when they have under the law performed this "duty and exercised this power, that the sum of "the valuations of the several counties so by them "found must be taken as the aggregate valuation "of all the property in the State, and is conclusive "and final as against the State board of equaliza- "tion. The State board may, for the purpose of "adjusting and equalizing, increase the aggregate "valuation of one county, and decrease the aggre- "gate valuation of another, but they have no "power to increase the sum of all the valuations of "the several counties of the State. The aggre- "gate valuation has been found for them, and "fixed by the authority and in the mode prescribed "by the law. This view is not only sanctioned by "the force of the general provisions of the statute "considered as a whole, but also by the phraseol- "ogy of the sections under consideration. The "board is to adjust and equalize the valuation.

"This term *valuation* here imports values already "estimated and fixed, and must be referred for the "measure of its force and meaning to the mode "prescribed by law for estimating and fixing valu- "ations. The aggregate material with which the "board can deal is thus limited; they may adjust "and equalize it among the several counties, but "they cannot add to its volume.

"It is claimed that in that the statute prohibits "the board from decreasing 'the aggregate valua- "tion of all the counties below the aggregate val- "uation as returned by the clerks of the several "counties' (General Laws, p. 756, Sec. 43), the "power to *increase* must be implied.

"A power so vast and important, involving the "integrity of constitutional limitation, cannot be "founded on an implication of law. A statute in "derogation of the rights of property, or which "takes away the estate of the citizen, must be "strictly construed. *Sharp v. Spier*, 4 Hill, 76: "*Bloom v. Burdick*, 1 *id.*, 130. * *

"We are, therefore, of the opinion that the "board of equalization, in making the increased "valuation, acted without authority of law, and "that their action in this respect is void."

A judicial interpretation given the statute in the state of its origin, prior to the adoption thereof, becomes a part of the statute itself, with the same force and to the same extent as though the decision was written into the law.

Henrietta M. & N. Co. v. Gardner, 173 U. S., 123.

Goldman v. Sotelo, 7 *Ariz.*, 23.

Furthermore, upon the adoption of a statute where the law antecedently to the adoption was settled by judicial interpretation thereof, the mere change of phraseology will not be construed a change of the law unless such phraseology evidently purports an intention in the Legislature to work a change.

McDonald v. Hovey, 110 *U. S.*, 619.

Metropolitan Railway Co. v. Moore, 121 *U. S.*, 558.

Willis v. Eastern Trust & Banking Co., 169 *U. S.*, 295.

The majority of the Territorial Supreme Court, in its opinion by Justice NAVE, refused to follow the interpretation given the Colorado statute by reason of the differences in phraseology of the two statutes. The Court says: (Rec., pp. 63-64.)

"The material differences in phraseology in the "two paragraphs we have indicated by italics.
"* * * * *

"It is to be noted that the Colorado statute pro- "vides: 'Said board shall ascertain whether the "valuation of *real estate* in each county bears a "fair relation,' etc., and that 'they may increase "or diminish the *aggregate* valuation of *real es-* "*tate* in any county,' while the Arizona statutes "provide: 'Said board shall ascertain whether "the valuation of *property* in each county bears a "fair relation,' etc., and that 'they may increase "or diminish the valuation of *property* in any "county.' In the Arizona statute the word 'prop-

"erty' appears where the words 'real estate' ap-
"pear in the Colorado statute, and the word 'ag-
"gregate' which appears in the Colorado statute
"does not appear in the Arizona statute. While
"by reason of this difference the meaning of the
"Arizona statute does not necessarily differ from
"that of the Colorado statute with reference to
"the power of the Territorial Board of Equaliza-
"tion to increase the sum of the valuations of the
"several counties as fixed by the county officers,
"there is, nevertheless, a very material difference
"in the meaning of these statutes in other respects."

From which it will be seen that the court, by the use of italics, points out the differences in phraseology of the two statutes, which the court frankly states do not necessarily change the meaning of the respective statutes, while the "very material differences in the meaning of the statutes in other respects" are not pointed out by the court in any manner whatsoever, nor, in fact, does any such difference exist. Nevertheless, the court bases its opinion upon such alleged difference in the meaning of the statutes which it says there is in "other respects," stating (Rec., p. 64):

"In view of this difference we do not feel con-
"strained to follow the interpretation given to the
"Colorado statute, even conceding the force of the
"identity of large portions of the other Arizona and
"Colorado statutes to which reference is made,
"and by reason of the general similarity of the
"phraseology of the two paragraphs set forth
"above, that the laws of Colorado were before

"the Legislature of Arizona when the Arizona "statutes in question were enacted, and supplied "a considerable portion thereof."

POINT II.

The majority of the Supreme Court of the Territory in its opinion further states (Rec.,p. 64):

"A careful examination of the case of Bell v. "Lathrop, *supra,* discloses that the language of "the statute in question was not construed. The "controlling factor in the conclusion reached in "that case was a provision of the constitution of "Colorado. While a Board of Equalization is "limited to the exercise of those powers only "which are clearly conferred upon it by law, and "while it would make no difference in the deter- "mination of the extent of such powers whether "they are conferred by statute or by constitution, "yet, on the other hand, statutes cannot confer "power upon public officers if that power is re- "stricted by constitutional provision. Therefore, "the statutes of Colorado could not confer powers "upon the State Boards of Equalization which by "a reasonable construction and application of the "constitution of Colorado that board could not "exercise. The Supreme Court of Colorado "could not construe the constituion and statutes "together so as to arrive at a reasonable construc- "tion of the law, but were under necessity first to "interpret the constitution and then to hold the "statutes to be limited by the constitution, no mat- "ter how much broader in their scopes the statutes "would be if not so limited."

It therefore becomes quite essential for us to ascertain if the statutes of Colorado are broader in their scope than the provisions of the Constitution. The provisions of the Constitution of the State of Colorado upon this subject is found in Section 15 of Article 10 (General Laws, State of Colorado, 1877, pp. 59-60), and is as follows:

> "Section 15. There shall be a State Board of "Equalization, consisting of the governor, state "auditor, state treasurer, secretary of state and "attorney general. Also in each county in this "State, a County Board of Equalization, consist- "ing of the board of county commissioners of said "county. The duty of the State Board of Equal- "ization shall be to adjust and equalize the valu- "ation of real and personal property among the "several counties of the State. The duty of the "County Boards of Equalization shall be to ad- "just and equalize the valuations of real and per- "sonal property within their respective counties. "Each board shall also perform such other duties "as may be prescribed by law."

This certainly is in no sense a limitation of the language of the statutes of Colorado above set forth. This constitutional provision simply confers power upon the State Board of Equalization to *adjust* and *equalize* the valuation of real and personal property among the several counties of the State. This is all the statute does. The statute is no broader than the constitutional provision, nor is the constitutional provision narrower than the statute, nor are the statutes of the Territory of Arizona above set forth,

under which authority is conferred upon the Territorial Board of Equalization, broader than the constitutional provision of Colorado. All that the Territorial Board of Equalization may do under the authority conferred upon it by the Arizona statute is to *adjust* and *equalize* the valuation of real and personal property among the several counties of the Territory. As was very clearly said by Justice SLOAN, in the *mandamus* case, *Territory vs. Board of Supervisors Yavapai County*, 84 *Pacific*, 519, at page 522, involving the issues as the case at bar:

> "The statutes confer no power or authority "upon the Territorial Board of Equalization to "make an original assessment of property, other "than railroads. It may equalize assessments "which have been made by the various assessors "and county boards of equalization. In doing "that it is not called upon, and, indeed, is not permitted, independently, to fix valuations. Its "power is restricted in this regard to the determination of the scale of valuation that should be "adopted in order to harmonize and equalize "assessments theretofore made, to the sole end and "purpose of securing reasonable uniformity of "valuation throughout the territory."

It is urged that in the interpretation of the Arizona statutes there are no constitutional limitations to be taken into consideration. However, this argument is entirely without force.

> "If it should appear that the assessments are "contrary to the letter or meaning of the statute,

"they must be set aside, even though they might "be also held invalid because inhibited by State or "National constitution. * * If an assessment is "contrary to a statute, it is just as invalid as if in- "hibited by the constitution; so if the assessments "here complained of cannot be sustained under the "general revenue law or the act specially applica- "ble to mining claims, there is no necessity for "going further to inquire if the constitution also "makes them vicious."

Pilgrim Consolidated Mining Company v. Board of Commissioners of Teller County, 32 Colo., 334.

The case of People *ex rel.* Crawford v. Lathrop, *supra,* has never been reversed or modified, but, on the other hand, approved in People v. Amos, 26 Colorado, 83, and reaffirmed in People v. Amos, 27 Colorado, 126. We find also that the reasoning in the case of People v. Lothrop, *supra,* has been followed by the Supreme Courts of many other states, and notably as follows:

State ex rel. Wallace v. State Board, 18 Mont., 473.

State ex rel. State Board v. Fortune, 24 Mont., 154.

Poe v. Howell, 67 *Pacific,* 62 (*New Mexico*) *nisi prius.*

M., K. & T. Ry. Co. v. Miami County Commissioners, 67 Kans., 434.

Chamberlain v. Cleveland, 31 Ohio State, 51.

Under the decison rendered in this case by the Supreme Court of Arizona, holding that the Board

may increase the aggregate valuation of property in the Terirtory above the aggregate valuations returned by the boards of supervisors of the several counties, the tax payer is entirely deprived of the safeguard provided by Paragraph 3831 of the Revised Statutes of 1901, which limits the rate of taxation for county and Territorial purposes. This statute is as follows:

> "3831. (Section 1.) There shall be levied, "annually, upon the real and personal property "within this Territory, the following taxes: For "Territorial revenue, not exceeding thirty-five "cents on each one hundred dollars of assessable "property, and such further sum or sums as shall "be necessary to meet the interest and payments "of the territorial bonds as provided by law; and "upon the same property the board of supervisors "of each county is also hereby authorized and em- "powered to levy and collect for county purposes "such additional and special taxes, not exceeding "two dollars upon each one hundred dollars value "of taxable property, and such further sum or "sums as shall be necessary to meet the interest "and payments of the county bonds as provided "by law."

For, of what avail to the tax payer is a limitation upon the rate of taxation, if the basis of the tax—the valuation of his property—may be increased at the will of the Territorial Board of Equalization, to an unlimited extent?

State v. Lothrop, 3 *Colorado,* 467, 468.

In thus increasing the aggregate valuation of

property in the Territory, the Territorial Board is clearly exercising a power neither expressly confered upon it by the statute, nor necessarily implied. It is the valuations of the various counties, each considered as an entirety, which are to be equalized, and the process of equalization never requires an increase in the sum total of the numbers or quantities which are to be equalized.

Point III.

THE TERRITORIAL BOARD OF EQUALIZATION, IN EQUALIZING AND ADJUSTING PROPERTY VALUATIONS BETWEEN THE SEVERAL COUNTIES, HAS NO POWER TO INCREASE OR DIMINISH THE VALUATIONS OF CERTAIN KINDS, CLASSES, SUB-CLASSES OR GRADES OF PROPERTY WITHIN ANY COUNTY. THE TERRITORIAL BOARD MUST DEAL WITH THE RESPECTIVE VALUATIONS AS RETURNED BY THE COUNTIES AS ENTIRETIES, BY MAKING SUCH CHANGES IN EACH COUNTY VALUATION AS A WHOLE AS WILL RELATIVELY EQUALIZE THE ENTIRE PROPERTY VALUES IN THE DIFFERENT COUNTIES.

The application for the writ discloses that the Teritorial Board of Equalization added to the assessment valuation of patented mines as a distinct class or sub-class of property. The Revised Statutes of the Territory of Arizona, 1901, pertaining to the classification of property for the purpose of taxation, are as follows:

"3831. (Section 1.) There shall be levied, "annually, upon the real and personal property

"within this Territory the following taxes: For "Territorial revenue, not exceeding thirty-five "cents on each one hundred dollars of assessable "property, and such further sum or sums as shall "be necessary to meet the interest and payments of "the territorial bonds as provided by law; and "upon the same property the board of supervisors "of each county is also hereby authorized and em- "powered to levy and collect for county purposes "such additional and special tax, not exceeding "two dollars upon each one hundred dollars value "of taxable property, and such further sum or "sums as shall be necessary to meet the interest "and payments of the county bonds as provided by "law."

"3835. (Section 5.) The term 'real estate,' "whenever used in this title, shall be taken to mean "and include the ownership of, or claim to, or "possession of or right or possession to any land "within the Territory; and the claim by possession "of any person, firm, corporation, association or "company to any land shall be listed under the "head of real estate: *Provided,* The term land "as used in this section shall not be so construed "as to include mining claims, either lode or placer; "the term 'personal property,' whenever used in "this title, shall be deemed and taken to mean, "and it is hereby declared to mean and include all "property of whatsoever kind or nature not in- "cluded in the term 'real estate,' as said term is "defined in this section. All personal property "in the hands of any trustee, agent, administrator, "executor or receiver and all personal property "mortgaged, or pledged shall, for the purpose of "taxation, be deemed to be the property of the

"person who has the possession thereof. When-
"ever solvent debts are assessed, the person
"assessed may deduct therefrom his liabilities."

"3836. (Sec. 6.) All taxable property must
"be assessed at its full cash value. The term 'cash
"value,' whenever used in this title, shall mean
"the amount at which the property would be taken
"in payment of a just debt due from a solvent
"debtor. Land, and improvements thereon, shall
"be separately assessed."

"3847. (Sec. 17.) Between the first Monday
"in February and the first Monday in June in each
"year, the county assessor, except as herein other-
"wise required of the Territorial Board of Equal-
"ization, shall ascertain, by diligent inquiry and
"examination, all property in his county, real or
"personal, subject to taxation; and also the names
"of all persons, corporations, companies or firms,
"owning, claiming or having the possession or
"control thereof, and he shall then determine the
"full cash value of all such property, and shall list
"and assess the same to the person, firm, corpora-
"tion, association or company owning or having
"the possession, charge or control thereof. The
"property of a ward shall be listed by his guard-
"ian; of a minor, having no guardian, by his
"father, if living, if not, then by his mother, if
"living, if not, then by the person having the prop-
"erty in charge; of a beneficiary for whom prop-
"erty is held in trust, by the trustee. The prop-
"erty of every deceased person shall be listed by
"the executor or administrator. The property of
"persons or corporations whose assets are in the
"hands of receivers shall be listed by such receiv-
"ers; of a body corporate, company, society or

"partnership, by its principal accounting officer, "agent or partner. Property under mortgage or "lease shall be listed by and taxed to the mort- "gagor or lessor, unless it be listed by the mort- "gagee or lessee. And all personal property in "the hands of any trustee, agent, administrator, "executor or receiver, and all personal property "mortgaged or pledged shall, for the purposes of "taxation, be deemed to be the property of the per- "son who has possession thereof. For the pur- "pose of enabling the assessor to make such assess- "ment, he shall demand from each person and "firm, and from the president, cashier, treasurer "or managing agent of each corporation, associa- "tion or company within his county, a statement "under oath or affirmation, of all the real estate "and personal property within the county, owned, "or claimed by, or in the possession or control of, "such person, firm, corporation, association or "company. If any person, officer or agent shall "neglect or refuse, on demand of the assessor or "his deputy, to give, under oath or affirmation, the "statement required by this section, or if the owner "of any property not listed by another person, "shall be absent or unknown, the assessor shall fill "out a list for such person, putting therein all tax- "able property which he has reason to believe is "owned by, in the possession or control of, said "person, officer or agent, liable to taxation. If "the name of such absent owner is known, the "property shall be assessed in his, her or their "name; if unknown to the assessor, the property "shall be assessed to 'unknown owners.' "

"3848. (Sec. 18.) It shall be the duty of "every person owning, or having charge of or un-

"der his control, property in this Territory, subject "to taxation, and as in this title provided, to make "out and deliver to the assessor, between the first "Monday in February and the first Monday in "June in each year, a correct list of the same as "required by law, whether he shall receive from "the assessor a notice or demand to do so or not; "and every assessment made against property sub- "ject to taxation shall be valid whether such notice "or demand was received or not."

"3849. (Sec. 19.) The said list shall contain, "first, his lands, by section or part of section, town- "ship and range, and where such part of section is "not a legal subdivision, or is unsurveyed, some "other description sufficient to identify it, and his "town lots, naming the town in which they are sit- "uated, and their proper description by number of "lot and block or otherwise, according to the sys- "tem of numbering in the town; second, the im- "provements on all such lands and town lots; "third, his personal property of every description, "or property held by him or under his control as "an agent or in any fiduciary capacity. The list "shall be signed and sworn to by the person mak- "ing it, and the oath may be administered by the "assessor or his deputy, or by any other officer au- "thorized to administer oaths."

"3861. (Sec. 31.) It shall be the duty of the "assessor to prepare a tax list or assessment roll, "alphabetically arranged, in the book or books "furnished him by the board of supervisors for "that purpose, in which book or books shall be "listed or assessed all the real estate and personal "property within the limits of the county, and in

"said book or books he shall set down in separate "columns:

"1. The name of the taxable inhabitants, "firms, incorporated companies or associations, in "alphabetical order, if known; if unknown, the "property shall be assessed to 'unknown owners'; "and if any person shall refuse to make a state- "ment of his property, under oath, as required by "this title, that fact shall be noted under his "name.

"2. All real estate taxable to each inhabitant, "firm, incorporated company or association, de- "scribed by metes and bounds, or by common "designation or name, if situate within the limits "of any city or incorporated town, describing by "lots or fractions of lots; if without said limits, "giving the number of acres as nearly as can con- "veniently be ascertained, and the location and "township where situate; all improvements upon "public lands, describing as nearly as possible the "location of such improvements: *Provided*, "That when two or more parties claim or give a "description of the same land, it shall be assessed "to each party making such claim or giving such "description, according to the estimated value of "the claims of each.

"3. The cash value of real estate and the im- "provements thereon.

"4. The cash value of all improvements on "real estate where the same is assessed to a person "other than the owner of said real estate.

"5. The cash value of all personal property "taxable to each person.

"6. The total value of all property taxable

"to each, and no further description of personal "property than that required by the foregoing "provision of this section shall be needed or be "requisite to render the assessment binding and "effective; and the description of real estate shall "be sufficient if the same can be readily identified "thereby."

"3868. (Sec. 38.) Said board (of super- "visors) shall have power to determine whether "the assessed value of any property is too small "or too large, and it may change and correct any "valuation, either by adding thereto or by deduct- "ing therefrom, if, in its judgment, from the in- "formation then possessed by it, the value fixed in "the assessment roll is too small or too large, "whether such value was fixed by the owner or "by the assessor; and if the board shall believe "it to be right to add to the assessed value of any "property, it shall cause this fact to be inserted in "the advertised notice hereinafter provided to be "given; but no assessment can be raised by the "board unless it is included in such advertised "notice."

"973. (Sec. 46.) The board of supervisors, in "their respective counties, have jurisdiction and "power, under such limitations and restrictions as "are prescribed by law: Subdivision 14. To "equalize assessments."

We are unable to find any respectable decision which holds that territorial or state boards of equalization may, without specific statutory authority and for the purposes of taxation, create certain kinds, classes, sub-classes or grades of property within a county, and then increase or diminish the valuation

of such classes and sub-classes so created. If this may be done at all, it may be done without limitation, and thus the territorial board of equalization might classify lands in high lands, bottom lands, cultivated lands, wild lands, meadow lands, pasture lands, wood lands, orchard lands, and, in fact, make every and any sort of a sub-classification, until each and every attribute of land was exhausted, and then under the guise of equalization re-assess the taxable value of such sub-classification of their own creation, thus constituting themselves a board of assessors, with power to fix and determine values, and this without notice to the tax payer or opportunity to him to appear and protest.

County of San Mateo v. Southern Pacific R. R. Co., 13 *F. R.*, 722.

County of Santa Clara v. Southern Pacific R. R. Co., 18 F. R., 325.

Justice CAMPBELL, with Justice DOAN concurring, in the dissenting opinion (Rec., p. 72), says:

"We find that the Legislature has classified real "estate for the purposes of taxation as follows: "Town or city lots, improvements thereon, land "outside of towns or cities, improvements thereon, "improvements on public lands, and nowhere in "the statutes are tax payers, assessors or boards of "supervisors required, either in express terms, or, "as I can perceive, by reasonable inference, to "make or to enter upon the assessment rolls fur- "ther or different classifications. Their full "statutory duty is performed when they have

"placed upon the roll real estate and valuations, "classified as the statute directs. * * *

"The majority of the court seems to rest the "power of the Territorial Board to increase or de- "crease valuations by sub-classes of real estate, "upon two propositions:

"First, that there is no *prohibition* upon the "assessors extending upon the rolls the description "of land beyond that required in the statute, so "as to designate its particular character; and, "therefore, having done so, the Board may act up- "on such sub-classifications. Second, they find "authority in Paragraph 973 for the Boards of Supervisors to require assessors to sub-classify real "estate upon the rolls, and in Paragraph 3877 "power in the Territorial Board to require the "County Boards to make return as a distinct class, "of any sub-classification appearing upon the "assessment rolls.

"I can see no force in the first contention. It "is leaving to the various assessors to say upon "what sub-classifications the Territorial Board "shall act. Next year they may choose to do "only what the law requires of them: place upon "the assessments rolls lands outside of cities and "towns by acres, without reference to whether "they are cultivated or grazing, mineral or non- "mineral. The clerks of the County Boards of "Equalization can only abstract what the rolls con- "tain. Therefore, the Territorial Board cannot, "under such conditions, know from the abstracts "that there are any mineral lands in the Territory. "I think I may without impropriety use for pur- "poses of illustration an allegation appearing in "the petition for writs of mandamus now pending

"in this court, involving the proceedings of the "Territorial Board. It appears that for the "year 1905 but two of the assessors of the various "counties placed upon the assessment rolls, as a "separate class, improvements upon patented "mines. It is a notorious fact that such improve- "ments exist in nearly, if not all of the counties of "the Territory—a fact that is probably within the "personal knowledge of every member of the "Board of Equalization—yet the assessors were "clearly within the law in returning them simply "as improvements upon land, and the Board is "prevented from equalizing such assessments in the "various counties.

"Conceding, as found by a majority of the "Court, that the supervisors may require the "assessors particularly to describe upon the rolls "the character of the lands, it would seem to be a "discretionary power. It is reading too much in- "to the statute to say that Paragraph 3877 gives "the Territorial Board supervisory power over "the County Board in the exercise of their duties "regarding the preparation of tax rolls. I con- "strue the provision, 'but the Territorial Board of "Equalization is authorized to diminish or add to "the above list, and to require such different or "further matters to be returned as it may deem "advisable,' to empower the Board only to require "the Clerk of the County Board to abstract by "classes the property included within 'the gross "amount of all other property.' I do not under- "stand the majority opinion to hold that the Ter- "ritorial Board may require the County Boards to "require assessors to so describe lands upon the "assessment rolls that they may be sub-classified,

"but only to hold that when the assessors have so "described it, the Territorial Board may require "the County Boards to abstract the information "the rolls contain. This leaves the Territorial "Board without power to cause the information to "be placed upon the rolls should the Board of Su- "pervisors not choose so to direct the assessors. "What we are seeking is the true intent and mean- "ing of the Legislature, and surely it cannot be "said that the Legislature meant to leave the Ter- "ritorial Board, in the exercise of such important "powers, dependent upon the will of the various "Boards of Supervisors."

This particular question was before the Supreme Court of Colorado January 17, 1900, under the Colorado-Arizona statute, in the case of *People v. Ames,* 27 Colorado, 126. The State Board of Equalization, purporting to have adjusted and equalized valuations of property between the several counties, which resulted in certain changes in the assessments as returned by the respective county assessors, directed such officers to make the alteration in their respective assessment rolls necessary to conform to the action and direction of the Board. This order the respondent refused to obey. To compel him to comply, therefore, the proceeding of mandamus was instituted. From the writ and return it appeared that the Board in equalizing and adjusting property valuations between the several counties increased and diminished the valuation of certain kinds, classes and grades in Arapahoe County, varying in increase from 2 to 54 per cent., and in de-

crease from 7 1-2 to 14 per cent. The respondent justified his refusal to comply with the order of the Board upon the ground that it had no authority to adjust and equalize valuations of property in Arapahoe County in the manner it did. The court says:

"The State Board has no authority to revise "the work of the County Board. Therefore, it "has no power to equalize valuations between "classes and kinds of property in the respective "counties, for that is a matter the constitution con- "fides to the County Board. In order, then, that "the two Boards may work harmoniously, the "action of one not interfere with the other, and "the authority of each, within its own proper "sphere, be supreme, it must necessarily follow "that the State Board, in equalizing and adjusting "values, must deal with the respective valuations "as returned by the county assessors as entireties, "by making such changes in each county valuation, "as a whole, as will relatively equalize the entire "property values in the different counties, so that "the burden of supporting the state government "shall rest proportionately upon each. In the "case at bar, the State Board has not adjusted or "equalized property valuations in Arapahoe Coun- "ty in the manner which the law contemplates, but "in selecting different clases and kinds of property, "and raising or lowering their values, has usurped "the functions of the County Board and attempted "to revise its action in this respect. In pursuing "this method it has clearly transcended its author- "ity, undertaken to perform acts which it had no "power to do, and having but special and limited "jurisdiction as a Board of Equalization, all acts

"outside of its authority are void." Citing:

People v. Lathrop, 3 Colorado, 428.

People v. Lawrence, 6 Hill, 244.

Wells, Fargo & Co. v. State Board of Equalization, 56 California, 194.

State v. Vaile, 122 Mo., 33.

State v. Thomas, 16 Utah 86.

In the case of *Orr v. State Board of Equalization*, 2 Idaho, 923, the State Board of Equalization added to the valuation of sheep of Bingham County an amount sufficient to fix the valuation thereof at the sum of $2.50 a head, and in like manner the said Board added to the valuation of cattle for the purpose of taxation a percentage of ten per cent. on the assessed valuation thereof as returned by the assessors of Bingham County, and made other changes in certain other classes of property. The Court says:

"The State Board of Equalization is wholly "the creature of the law. It has no authority except "that which is given by the Act of March 14, "1891. * * * No power whatever is given to the "Board to raise or diminish any class or classes of "property by any percentage or in any manner "whatever. No power is given it to assess or fix "the value of any kind of property. * * *

"What they can do may be given in a few "words. They may add to or take from the ag- "gregate valuation of real and personal property of "a county a certain percentage. The statute hav- "ing specified what they may do, necessarily ex-

"cludes every other power. It may be granted "without argument that this will not enable the "board to fix a uniform rate of assessment upon "the different classes of property throughout the "State. It may be granted that the assessor of "one county may value cattel at $10 per head, and "the assessor of an adjoining county may value the "same class of property at $15 a head, and there is "no remedy within the power of the State Board "except to raise or lower the aggregate valuation "of all the property in the county. If it was in-"tended by the Legislature to give the Board of "Equalization the power to raise or lower certain "classes of property in the county, which would "seem to be desirable, it has utterly failed to do so. "This court can not add to or take from the words "of the statute."

See also:

State ex rel. State Board v. Fortune, 24 Mont., 154.

State v. Thomas, 16 Utah, 86.

Wells, Fargo & Co. v. Board of Equalization, 56 Calif., 190.

Nor has a State Board anything to do with adjusting the valuations of different parcels of land in the same county. Inequalities between parcels of lands or classes of land in the same county are matters within the exclusive jurisdiction of the County Board.

State ex rel. Wyatt vs. Vaile, 122 Mo., 33.

Moreover, it will be noted that patented mines, as such, have never been subject to legislation in the

Territory of Arizona, and that such pretended subclassification of lands is purely the creation of the Territorial Board of Equalization itself.

This question was also before the Supreme Court of Nebraska in the case of *Hacker v. Howe*, 101 N. W., 255, in which the Court says, at page 260:

> "Concerning the contention that the State "Board in respect of the action taken did not "equalize, but re-assessed the property of the sev- "eral counties, raising the aggregate valuations "thereof according to the percentage applied to "each county, it may be said that manifestly the "Board has no power to increase valuations mere- "ly for the purpose of making such increase. The "limitations of law relative to tax levies, the fix- "ing of valuations and the equalization thereof "cannot be nullified and rendered impotent by an "attempt to increase the aggregate of the grand "assessment rolls under the guise of equaliza- "tion. * * *
>
> "The State Board does not deal with individual "assessments, but with the property of the county "as a whole, and if it appears to them to be assessed "at a valuation relatively lower or higher than the "property in all the other counties, the whole is "affected by the order of equalization, and not the "different items or classes. Individual discrep- "ancies and inequalities, the law contemplates "shall be corrected and equalized by the county "authorities."

POINT IV.

Finally, after a very exhaustive discussion of the Colorado-Arizona statutes and the case law upon the

question, counsel for appellee feel called upon to invoke the dictrine of "practical construction." The doctrine of practical construction is wholly inapplicable to the case at bar, for the reasons:

1. That the authority under which the Territorial Board of Equalization may act must be found in some *express* provision of the statute, it being a board of limited jurisdiction.

2. That the statutes sought to be construed, before their adoption had received judicial interpretation, and therefore this is not a case in which the construction involved is really one of doubt.

3. The authority attempted to be exercised by the Board of Equalization under its construction of the statute does not relate to mere matters of form, but concerns the substance of the legislation.

4. That no rights have accrued by reason of such reliance upon a practical construction.

5. That the present case is the first instance of the attempt of the Territorial Board of Equalization to raise this sub-classification of property, namely, patented mines. (Rec., pp. 55-60.)

The law upon this subject is clearly stated in the case of *Studebaker v. Perry*, 184 U. S., 258, in which Justice SHIRAS says, at page 269:

> "The doctrine invoked is a useful one, but its "application should be restricted to cases in which "the construction involved is really one of doubt, "and that those to be affected have relied upon the "practical construction, and rights have accrued

"by reason of the reliance. The rule is well ex-
"pressed in Cooley on Constitutional Limitations,
"5th Edition, p. 69:

"'If the question involved is really one of
"doubt, the force of their (officers) judgment,
"especially in view of the injurious consequences
"that may result from disregarding it, is fairly
"entitled to turn the scale in the judicial mind.
"Where, however, no ambiguity or doubt appears
"in the law, we think the same rule obtains here as
"in other cases, that the court should confine its
"attention to the law, and not to allow intrinsic
"circumstances to introduce a difficulty where the
"language is plain. To allow force to a practical
"construction in such a case would be to suffer
"manifest perversion to defeat the evident pur-
"pose of the lawmakers.'"

Westbrook v. Miller et al., 56 Mich., 152
(By Justice COOLEY.)

Black on Interpretation of Laws, page 221.
"Acquiescence for no length of time can legalize a clear usurpation of power."

Cooley on Constitutional Limitations, 7th
Edition, p. 106.

The judgment of the Supreme Court of the Territory of Arizona should be reversed.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1906

NO. 280

COPPER QUEEN CONSOLIDATED MINING COMPANY, *Appellant*

vs.

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA

BRIEF FOR APPELLEES

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NO. 280

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THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA

BRIEF FOR APPELLEES

This was a proceeding in certiorari commenced by petition filed by the appellant in the Supreme Court of the Territory of Arizona for the purpose of testing the validity of the action of the Territorial Board of Equalization in increasing, for the purpose of taxation for Territorial purposes for the year, 1905, the valuation of patented mines in certain counties in Arizona, in one of which (Cochise) are situated certain patented mines owned by the appellant as to which it is claimed such increase in valuation, if sustained, would result in increasing the tax thereon for said year more than $5,000. The petition also complains of the action of the appellees in increasing the

valuation of work horses and saddle horses, but the real controversy is over the increase in the valuation of patented mines,

Upon the petition being filed the writ of certiorari issued, but before the return day an amended petition was filed (R. pp. 7–11). On the following day the respondents (appellees here) filed a general demurrer to the petition (R. p. 6) which, under Arizona practice, subserves, in such case, the purposes of a motion to supersede upon the ground that the writ was issued improvidently. Thereafter the respondents filed a return (R. p. 11), certifying the record proceedings complained of (R. pp. 12–29), including the several abstracts of assessments furnished by the boards of supervisors or county boards of equalization of the several counties (R. pp. 30–55) as the basis of the respondents' action, and also the record of increases and decreases made by the Territorial Board of Equalization for each and every year, commencing with 1887 (R. pp. 55–60), showing that like action with respect to particular classes of property had been uniformly taken by the Territorial Board of Equalization prior to the action complained of.

In 1905, however, the Territorial Board of Equalization for the first time undertook to raise the valuation of patented mining property, which was the occasion of the present proceedings.

The case was considered by the court below, and is before this court, upon the demurrer to the petition and the return serves only the purpose of evidencing facts of which the court below took judicial notice and of which this court will take judicial notice.

The petition does not aver that by the action of the appellees complained of, mining property as a class has

been burdened with a valuation that is unreasonable or excessive, or that the property of the petitioner is thereby given a valuation that is unreasonable or excessive or even adequate. The contention of the appellant is solely and purely that the board has exceeded its power in two respects, first, in raising the valuation of patented mines as a class, and, second, in raising the sum of the aggregate valuations of property in the several counties as returned by the county boards of equalization.

The first point submitted for the consideration of the court is, therefore,

That the petition fails to show that the petitioner is injured by the action complained of.

The writ of certiorari will lie only where required to do substantial justice, and will never be granted where it has not been shown that the petitioner has suffered a substantial injury by the action complained of.

It is clear, and admitted by the appellant, that the board of equalization had the power to increase the aggregate valuation of taxable property in Cochise county, and in so doing had the power to increase the valuation of the petitioner's property in that county along with all of the other taxable property therein. So that, inasmuch as it is not contended that the valuation of the petitioner's property was raised beyond or even to its actual cash value, which is the statutory measure of valuation for taxation, it would seem that there has not been any injury done to the petitioner; but its whole contention is that, so far as the merits of the matter go, other classes of property have not been equally increased, on the one hand, and on the other, that the aggregate valuation of property

in some other county or counties has not been reduced in such measure as not to disturb the aggregate valuations of property in all the counties.

It would seem, therefore, that the petitioner has no substantial claim of injury and that the action of the appellees ought not to be reviewed at its instance in certiorari proceedings.

In Arizona clear and adequate remedies in cases of alleged illegal or erroneous tax assessments are provided by statute and, therefore, certiorari will not lie.

Act 92 of the session laws of the Legislative Assembly of Arizona of 1903, amending chapter VII of the Revised Statutes of 1901 provides (Pars. 3917 and 3918 as amended. See appendix.) for judicial proceedings to enforce the lien of tax assessments against real estate by sale and in such proceedings any defence may be availed of except the claim of over-valuation, which is provided for in paragraph 3875 of the Revised Statutes of Arizona of 1901, giving the right of appeal to the district court whenever any tax payer is dissatisfied with the valuation placed upon his property (see paragraph 3875 printed in full in the appendix hereto).

As the right of certiorari in tax matters is largely discretionary and will not be granted where the petitioner does not show substantial injury accruing to him by the action complained of, or has other adequate remedy, nor where, as here, great public inconvenience would result, we submit that the denial of the writ by the supreme court of Arizona should not be reviewed by this honorable court.

Passing these preliminary matters and taking up the question of the validity of the action of the appellees complained of, the controversy resolves itself into the proper construction of paragraphs 3877, 3879 and 3880 of the Revised Statutes of Arizona of 1901, which reenacted paragraphs 2655, 2657 and 2658 of the Revised Statutes of Arizona of 1887, prescribing the duties and power of the territorial board of equalization. So much of these paragraphs as is material, reads as follows:

3877. (Sec. 47.) Immediately after the adjournment of the board of equalization in June (July), the clerk thereof shall make an abstract of the assessment roll, containing the whole number of acres of land, other than town or city lots, listed in the county, and the valuation thereof, and the value of the improvements thereon; the total valuation of town or city lots and the value of the improvements thereon; the whole number of miles of railroad within the county, and the value thereof; the whole number of horses, and their total value; the whole number of mules, and their total value; the whole number of asses, and their total value; the whole number of cattle, and their total value; the whole number of sheep, and their total value; the whole number of swine, and their total value; the whole number of goats, and their total value; the gross amount of all other property, and the total valuation of all taxable property; which abstract the clerk shall make out in duplicate, filing one copy in the office of the board of supervisors, and transmitting one copy forthwith to the territorial auditor; but the territorial board of equalization is authorized to diminish or add to the above list, and to require such different or further matters to be returned, as it may deem advisable; and if the said board of supervisors or clerk shall fail to forward to the territorial auditor the said abstract, the territorial board of equalization must obtain the abstract or so much thereof as is necessary from other and reliable sources.

3879. (Sec. 49.) (As amended by Act 23, Laws 1903.) The Territorial Board of Equalization shall consist of the Territorial Auditor, who shall be Chairman of the Board, and one member from each of the Judicial Districts of the Territory, * * * * * * * * * *
They shall sit at the office of the Territorial Auditor on the second Monday in August of each year, for the purpose of, and they are hereby authorized and required to examine the various assessments, so far as regards the Territorial tax, and equalize the rate of assessment in the various counties whenever they are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different Assessors and Boards of Equalization. The said Board shall continue in session until the business before it shall be disposed of, and shall have access to and make use of all records in the office of the Territorial Auditor and Territorial Treasurer, which will aid them in the disposition of such business. The said Board shall keep a record of the business transacted by it, and are authorized to employ a secretary,

* * * * * * * * * *

3880. (Sec. 50) The said board shall ascertain whether the valuation of property in each county bears a fair relation or proportion to the valuation in all other counties in the territory, and on such examination they may increase or diminish the valuation of property in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of property in the territory; but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as returned by the boards of supervisors of the several counties. And said board shall at the same time fix the rate of taxes for territorial purposes which is to be levied and collected in each county.

[The foregoing paragraphs and other paragraphs under the same title "Revenue" in the Revised Statutes of 1901, to which reference will be made in the course of the argument, are printed in full as an appendix hereto.]

The petitioner (appellant here) contended in the court below, as it does here, first, that under these paragraphs of the Statutes of Arizona the Territorial Board of Equalization is without power to increase the sum of all the valuations of property in the several counties of the Territory as fixed and determined by the respective assessors and county boards; second, that the Territorial Board of Equalization has no authority to raise or diminish the valuations placed upon different classes of property in any county; and third, that if the Territorial Board of Equalization may equalize valuations by classes of property, it is nevertheless confined to the classification made by paragraph 3877, and cannot for that purpose recognize a sub-class such as patented mines.

The first contention of the appellant is based wholly upon the theory that the paragraphs of the Arizona Statutes in question were adopted from the Statutes of Colorado and carried with them an alleged judicial construction by the Supreme Court of Colorado in the case of People ex-rel Crawford v. Lathrop (3 Colo., 428).

On the other hand, the respondents contended that the Arizona Statute is clear and unambiguous with respect to the powers of the Territorial Board of Equalization, that the construction contended for by the respondents had been fixed by the uniform action of the Territorial Board of Equalization for eighteen consecutive years, that such practical construction was recognized and adopted in the revision of 1901, that the paragraphs of the Arizona Statutes in question were not adopted from the Colorado Statutes, and that the Colorado case cited did not construe the Colorado Statute in such wise as to attach to the language thereof a construction which would be carried by that language if adopted in another jurisdiction, but that

the decision of the Colorado Court was controlled by constitutional provisions which imposed upon the Colorado Statute the limited construction contended for by the appellant here.

The court below, after a most careful consideration, overruled all of the contentions of the petitioner and in a full and convincing opinion sustained the action of the respondents (Opinion Record 61-71).

The next question presented is the weight to be given the decision of the court below construing the Territorial Statute in question, and we submit that

The Supreme Court of the United States will not disturb a decision of the Supreme Court of a Territory construing a local statute unless manifest error appear.

In Sweeney v. Lomme (22 Wallace, 208), the court, per Mr. Justice Miller, said:

"The first error assigned and mainly relied on is, that the bond on which the suit is brought, having been given to Roberts, the Sheriff, this action cannot be maintained by Lomme, the party for whose benefit it was really given.

"This question has been decided differently by different state courts under precisely the same Code of practice.

"In several of these it has been held that the real party in interest is always the proper plaintiff, while in others it is held that the suit must be brought by the obligor in the bond for the use of the party in interest.

"Without expressing any opinion of our own on the question, *we hold that as it is one which arises under their own Code of practice, we should, in this conflict of authority, adopt the ruling of the supreme court of Montana in the consideration of it.* This assignment of error, is, therefore not well taken."

In Northern Pacific R. Co. v. Hambly (154 U. S., 349), the court, per Mr. Justice Brown, said:

"We have thus far treated this case as determinable by the general and not by the local law, as was held to be proper both in the Ross case and the case of Baugh. In so holding, however, the court had in view only the law of the respective states as expounded by their highest courts. Wherever the subject is regulated by statute, of course the statute is applied by the Federal courts pursuant to Revised Statutes, section 241, as a 'law' of the state.

"By section 3753, Compiled Laws of Dakota Territory, in one of the courts of which this case was originally commenced, 'an employer is not bound to idemnify his employe for losses suffered by the latter in consequence of the ordinary risk of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employe.' In the case of *Elliot v. Chicago, M. & St. P. R. Co.* 3 L. R. A. 363, 5 Dak. 533, a case which arose after the enactment of the above statute, the supreme court of the territory held that a section foreman and a train conductor were co-employes within the purview of this statute, and were 'engaged in the same general business.' *While this construction, given by the supreme court of a territory, is not obligatory upon this court, it is certainly entitled to respectful consideration, and in a doubtful case might well be accepted as turning the scale in favor of the doctrine there announced.* The opinion is a very elaborate one, reviews a large number of cases, and follows those of New York, Pennsylvania, and Massachusetts, as founded upon sounder principles. We may safely assume that the construction thus given to this statute will not be overruled by the courts of the two states which have succeeded the supreme court of the territory without most cogent reasons for their action."

In Fox v. Haarstick (156 U. S., 674), the court, per Mr. Justice Shiras, said:

"This was the conclusion reached by the supreme court of the territory, which disposed of the question in the following terms: 'It is contended that the court erred in failing to find facts on the question of fraud set up in the answer. The court found separatively and specifically that the contract set up in the complaint was sustained by the evidence. This finding necessarily negatives any fraud as alleged, and is sufficient to sustain the judgment.'

"It is true that this ruling of the supreme court of the territory does not, even in a question of practice arising under the local law, preclude this court from reviewing it, as would a decision of a state supreme court in similar circumstances; *but unless a manifest error be disclosed, we should not feel disposed to disturb a decision of the supreme court of a territory construing a local statute.* So far from discovering manifest error in that ruling we concur with the supreme court of the territory in their disposition of the question."

In Salina Stock Co. v. Salina Creek Irrigation Co. (163 U. S., 109), a question of practice under the Utah code of civil procedure was presented, and it was argued that as the code of civil procedure of California is in similar terms to that of Utah, the Utah practice should be regulated by the decisions of the California courts in construing the provisions of the California code. This court, however, per Mr. Justice Shiras, said:

"But the sole contention is that it was not competent for the supreme court to modify the findings of fact of the court below and enter a judgment on the facts as thus modified—that, if dissatisfied with the findings, the supreme court should have sent the cause back for a new trial. Several California cases are cited, in which it was held that when the findings are erroneous it is not the

province of the supreme court, on appeal, to look into the evidence with a view to reform the findings, and then to enter a judgment in accordance with what the findings ought to have been, but that, in such a case, the supreme court will reverse the judgment and remand the cause for a new trial.

"While it is true that the code of civil procedure of California is in similar terms to that of Utah, *it does not follow that the courts of the latter will be regulated by decisions of California courts in construing the provisions of the code.*"

* * * * * *

"Without denying the authority of this court to find error in the judgment of the supreme court of a territory, even in passing on a question of practice, we certainly should not feel inclined to exercise such authority unless we were able to perceive that injustice had been done."

In Whitney v. Fox (166 U. S., 637), the construction of a statute of Utah was involved. It was contended that the Utah statute was copied substantially from a statute of California and that the interpretation placed by the Supreme Court of California upon that statute should be followed in applying the Utah statute. After suggesting that the Supreme Court of Utah evidently entertained a different view of the Utah statute, this court, per Mr. Justice Harlan, said:

"While, as said by this court in *Coulan* v. *Doull*, 133 U. S., 216, 233, it is the ordinary rule to accept the interpretation given to a statute by the courts of the country by which it was originally adopted, the rule is not an absolute one, to be followed under all circumstances. We concur in the interpretation placed upon the Utah statute by the supreme court of Utah, as one required by the obvious meaning of its provisions, *and we do not feel obliged, by the above rule, to reject that interpretation because apparently the highest court of the state from which*

the statute was taken has, in a single decision, taken a different view. We, therefore, hold that to the extent indicated by the court below Whitney was an incompetent witness as to any fact occurring before the death of Lawrence and equally within the knowledge of both."

We confidently submit that, here, the construction given by the Territorial supreme court to the local statute in question is certainly not manifestly wrong, but, on the contrary, is the plain intent of the legislative assembly, and that even were the question doubtful this honorable court should be controlled by the authorities we have cited, and accept the ruling of the court below.

With these preliminary suggestions we come to a consideration of the merits of the case, and deem it expedient to incorporate herein the full presentation made in the brief filed in the court below by Mr. E. S. Clark, as attorney general of the territory.

The questions involved in the consideration of this case are somewhat new. The establishment of state or territorial boards of equalization charged with powers and duties of the character of those with which our territorial board is charged is the result of comparatively recent legislation. A casual view of the cases, not numerous and wholly irreconcilable, suggests that the questions are yet ones practically of first impression.

The theory and intent of the Arizona System of taxation

In the interpretation of statutes, or of any written laws, the mischief sought to be remedied, or the end sought to be attained, should be kept in view as a guide.

It is a matter of common observation that a tendency has grown up in local communities to so value property

for the purposes of taxation that each community, acting selfishly and, if it may do so, independently, will so value its property that it will bear the least possible share of the burden that should be borne by all throughout the state of which the community, whether county, township, city or district, forms a part. This evil has grown to such an extent that legislators have for the past quarter of a century been endeavoring to find a remedy for it. As a result of that effort our statute was enacted.

There are certain cardinal principles that are held applicable to taxation, and they are probably as clearly stated by Adam Smith as by any authority upon that subject. The axioms he laid down have been quoted, cited, and, almost without modification, accepted by the courts and law writers.

They are:

I. "The subjects of every state ought to contribute towards the support of the Government, as nearly as possible in proportion to their respective abilities; that is, in respect to the revenue which they respectively enjoy under the protection of the state." [The author then likens the expense of government as borne by the individuals of a nation to the expense of the management to the joint tenants of a great estate, who are all obliged to contribute in proportion to their respective interests in the estate, and adds] "In the observation or neglect of this maxim consists what is called the equality or inequality of taxation."

Maxims II, III, and IV laid down by him relate only casually to our discussions:

II. The tax which each individual is bound to pay ought to be certain, and not arbitrary.

III. The convenience of the taxpayer as to time and manner of levy should be considered; and

IV. The tax ought to be so contrived as to take out and keep out of the pockets of the *people* as little as possible beyond what goes into the treasury: that is, the cost of collecting the taxes should be kept as low as possible.

Any law that violates these principles must be subversive of justice.

There is an idea prevalent that taxes are a burden imposed *in invitum*, and the resistance to which is justifiable, and courts have been, in many instances, too prone to take a like view. In good morals, upon every principle of just government, the cost of the maintenance of the government should be voluntarily borne—as a just contribution by the citizen willingly paid, and not as an exaction forced from him against his will. The citizen who objects to this contribution is not and cannot be a good citizen.

The facts in this case so clearly show that certain classes of property heretofore have not borne their fair share of taxes that a failure to compel them to do so is to directly work an injustice upon those who voluntarily make their contribution to the support of government, just in the proportion that the failure of those who do not, bears to those who do pay their just taxes,

Briefly stated, our system of taxation, which seeks to apportion the burden proportionately and uniformly, is:

1. The assessor elected by the people of each county calls upon the property owners of his county for a list of their taxable property.

2. The assessor returns this list to the Board of Supervisors with his estimate of the values of the various kinds of property listed.

3. The Board of Supervisors then examines this list,

and if that board thinks the estimated values returned by the assessor a fair one, it so stands; but if the board thinks it too high or too low, it changes it accordingly.

4. These returns are made finally to the Territorial Board of Equalization, whose functions and powers are the subject of dispute in this case. The returns are required to be by classification of property prescribed by statute and such further classification as the Territorial Board of Equalization may require.

The uniform practical construction of Secs. 3877, 3879 and 3880 with respect to the functions and power of the Territorial Board of Equalization.

It appears, and we say it so appears because they are facts of which the court below took judicial notice and of which this court will take judicial notice, of which proof is not necessary and of which successful contradiction is not possible, that for nearly twenty years our tax law has been construed by those officers charged with its execution, precisely as it has been by the Board at its last session when it ordered the raising of the valuation of certain classes of property; and this, with, in some cases, the direct, express approval of eminent lawyers whose duty it was to advise as to the construction of the law, and in other instances with the tacit acquiescence of other equally good lawyers with complete knowledge of the practice and whose duty it was to correctly advise.

Our tax law so far as it relates to the creation of the Territorial Board of Equalization, and defines its duties and powers, was enacted in 1887. The first meeting of the Board for the purpose of equalization was in August, 1887. At that time the Hon. John J. Hawkings was

Territorial Auditor, and *ex virtute officii*, the chairman and a member of the Board. Judge Hawkins was at one time and not long after that meeting an honored member of the Supreme Court of Arizona, and has the reputation of fine legal ability. At that meeting the Board raised the valuation of cattle in Cochise county twenty per cent.; in Gila county eighty-five per cent.; in Pima four per cent.; in Pinal forty-five per cent.; and in Yuma twenty-three per cent.; and of horses in Cochise county fifty per cent.; in Gila seventeen per cent.; in Pima fifty per cent.; in Apache forty per cent.; in Graham fifty per cent.; and in Maricopa fifty per cent. Slight reductions were made in the valuation of some classes of property, but the total valuation of all the property in the Territory was raised by large amounts by the increase in valuation of the classes mentioned. John A. Rush was at that time Attorney General of the Territory, (R. p. 55).

Again in 1888, Judge Hawkins then, as before, being Territorial Auditor and chairman of that Board, the Board raised the returned valuation upon lands, improved lands, town and city lots, improvements on town and city lots, and upon certain classes of cattle, varying percentages throughout the various counties of the Territory, thereby increasing by raising the valuation of certain classes, the aggregate value of all the property in the Territory. John A. Rush was at that time Attorney General of the Territory, (R. p. 55).

In 1889, Thos. Hughes was Auditor and Clark Churchill was Attorney General. At the meeting of that year the Board asked of the Attorney General specifically as to its powers and the Attorney General thereupon gave his opinion in writing which was as follows:

PHOENIX, A. T., AUG. 20th, '89.

"*To the Hon. Territorial Board of Equalization,*
Tucson, Ariz.

"Complying with your request that my opinion be given you upon the following propositions, namely:

"First: You state that the Board of Equalization of Yavapai County have reduced the assessed value of the subsidy lands of the Atlantic and Pacific Railroad Company from $1.25 per acre to 30c per acre and you desire my views whether you have the power to change that valuation, and

"Second * * * * * * * *

and I have the honor to answer both questions together, as follows, namely: By Par. 2657 R. S. of Arizona, your Board is authorized and required to examine the various assessment, etc., etc., and Par. 2658 provides that 'The Board shall ascertain whether the valuation, etc., etc.' I understand that the intention of all these provisions taken together is:

"1st. That if you find the same classes of property of equal value in different counties assessed at different valuations — in some higher and in some lower — that it becomes your duty to raise the lower, or reduce the higher valuation, so as to make the assessment uniform in all the counties.

"2nd. That in doing this you are prohibited from so changing the assessed value of part of the property in the Territory as to leave the aggregate assessed value of all the property in all the several counties below the aggregate valuation as returned by the boards of supervisors of the several counties.

"3rd. There is no limitation upon your proceeding to 'increase or diminish the valuation of property in any county as much as in your (their) judgment may be necessary to produce a just relation between all the valuations of property in the Territory,' except that last above stated.

"4. There is nothing in the Statute prohibiting you from so reducing or raising any part of the assessed valuation of part of the property in any one county as to make the aggregate valuation of the property of that county either higher or lower than the aggregate valuation returned by the Board of Supervisors provided you keep within the other rules as above indicated."

"Respectfully your Obedient Servant,
(Signed) "CLARK CHURCHILL,
"Attorney General."

At that meeting the Board raised valuations of horses, mules, asses, cattle, sheep, swine, and three classes of lands in various counties by percentages ranging from 2 to 150 per cent., raising the aggregate value of all the property in the Territory. (R. p. 56).

In 1890 Hughes was Auditor and Churchill Attorney General. Again the valuations of several classes of property, as horses, cattle, sheep, goats, etc., were raised by percentages varying from 3 to 33 per cent, and the aggregate value of all the property was thereby raised. (R. p. 56).

In 1891 Hughes was Auditor and Churchill Attorney General. The valuation of classes was in some instances raised and in some reduced, at various rates, the result being to increase the aggregate value of all the property in the Territory. (R. p. 56).

In 1892 Hughes was Auditor and William Herring was Attorney General, and again there were raises and diminution of valuations of *classes* of property, the result being an increase of the aggregate valuation of all the property in the Territory. (R. p. 57).

In 1893 H. C. Boone was Auditor and Francis J. Heney was Attorney General, and the valuation of classes was

raised in some instances and in others diminished, the result being as increase in the aggregate value of all the property of the Territory (R. p. 57).

In 1894 Boone was Auditor and Satterwhite Attorney General, and the valuations of certain classes were raised and others diminished, the result being an increase in the valuation of all the property in the Territory (R. p. 57).

In 1895 C. P. Leitch was Auditor and Col. J. F. Wilson, lately our delegate to Congress, was Attorney General, and the Board increased the valuations of cattle, mules, land, town and city lots, and the improvements in certain counties by various ratios of percentage, increasing the aggregate valuation of all the property in the Territory (R. p. 57).

In 1896 Leitch was Auditor and Wilson Attorney General, and horses, mules and lands were raised by various ratios of percentage in certain of the counties, increasing the aggregate value of all the property in the Territory (R. p. 58).

In 1897 Leitch was Auditor and C. M. Frazier was Attorney General, The Board raised in most instances the valuations of horses, sheep, swine, goats and land, and in one or two instances lowered some of these classes by varying ratios in certain counties, the result of which was an increase in the aggregate valuation of all the property in the Territory (R. p. 58).

In 1898 Dr. G. W. Vickers was Auditor and C. F. Ainsworth was Attorney General, and with slight reductions in some instances the Board increased the valuations of cattle, sheep, horses, goats and swine, resulting in an increase in the aggregate valuation of all the property in the Territory (R. p. 58).

In 1899 Dr. Vickers was Auditor and Mr. Ainsworth

Attorney General. Again there was an increase in most instances of the valuation of classes of property and a diminution in some, the aggregate value of all the property in the Territory being increased (R. p. 59).

In 1900 Dr. Vickers was Auditor and Mr. Ainsworth Attorney General. The Board accepted the returns of valuation of mining properties as made, but increased the valuation as returned of cattle, sheep, mules, swine, goats and horses by ratios varying from 2 to 100 per cent, increasing the aggregate value of all the property in the Territory (R. p. 59).

In 1901 Dr. Vickers was Auditor and Mr. Ainsworth was Attorney General. There were raises by different ratios of percentage ranging from 1 to 80 per cent on range cattle, milch cows, land grants, goats, mules, swine and horses, raising the aggregate valuation of all the property in the Territory (R. p. 59).

In 1902 W. F. Nichols was Auditor and Judge E. W. Wells, once a member of the Supreme Court of Arizona, was Attorney General. The Board that year raised by varying ratios the returned valuations of cattle, sheep, milch cows, land grants, goats, swine, and range, work, and saddle horses, resulting in a raise of the aggregate valuation of all the property of the Territory (R. p. 60).

In 1903 Mr. Nichols was Auditor and Judge Wells was Attorney General. Mules, asses, goats and milch cows were raised by various ratios of percentage from 1 to 26 per cent., thereby raising the aggregate valuation of all the property of the Territory, (R. p. 60).

In 1904 Mr. I. M. Christy was Auditor and Judge Wells was Attorney General. Raises were made by the Board that year of range cattle, milch cows, mules and horses by

ratios of percentage ranging from less than 1 to 97 per cent. The aggregate valuation of all the property of the Territory was raised, (R. p. 60).

In 1005 Wesley A. Hill was Auditor and E. S. Clark was Attorney General. The Board made raises of the valuation of classes, for the *first time* including patented mines, although they had been returned in a separate class since 1897.

Following the action of the Territorial Board of Equalization from 1887 until 1904, the local taxing officers of the various counties had increased the valuations in their counties as directed by the Territorial Board of Equalization, and the taxes computed upon this basis had been paid without protest by the taxpayers of the Territory.

The Functions of the Assessor, County Boards and Territorial Board of Equalization.

It is argued by some courts that the power of fixing the value of property is vested in the assessor, subject to modification by the County Board of Equalization. It is argued that the valuation fixed by the assessor, he being an officer elected by the people, one who has a local view of the property, and opportunity to know its value, must be presumed to be the proper value of the property listed. This may be true, but it is carried too far to say that it is at all conclusive. To carry the presumption so far is to instantly take away any reason for the establishment of any board of review. It is because, as a matter of fact, that the assessor so often, corruptly, negligently, or ignorantly, fails to discharge his duty of just valuation that a board of

review is established by the Legislature to correct that evil. The valuation by the assessor is not conclusive; it is not even presumed to be correct, for upon a contrary presumption the Board of Supervisors may either diminish or increase the valuations returned by him. There may be a presumption that the local officer, with his better opportunities, is better able to estimate values than is the Board of Supervisors, but the presumption is of no more force than is the presumption in favor of the judgment of a Justice of the Peace, upon an appeal from it to the District Court, binding upon the latter. The power to review it is given in both instances upon the theory that the lower tribunal may have and could have erred. The power is intended to be corrective, in both cases, of possible errors, the occurrence of which are so flagrant and so frequent as to warrant the establishment of the corrective tribunal.

The power of the Board of Supervisors is simply that of equalization. If there is to be observed a distinction between equalization and assessment it has never been carried, under a statute anything like ours, to the extent of holding that the local board may not change valuations returned by the assessor. The power of the local board to diminish or increase individual valuations has not been questioned. And we think it will hardly be claimed that they may not change valuations, regardless of whether the aggregate valuation, as returned by the assessor, is reduced or increased. There can be but one justification for any change in valuation for taxation, and that is that the change brings the valuation more nearly the *cash value* of the property assessed. Any other change would be clearly in derogation of every principle of just taxation.

It would be almost inconceivable that changes made by

the local board may not affect, either by increasing or diminishing, the aggregate of the valuation returned by the assessor. It could only be by the remotest chance that the aggregate would not be changed by any fair process of equalization by the local board. True cash value is the standard by which equalization is to be made—not by averages. And yet it is by averages that some of the courts suggest that equalization is to be obtained. Singularly enough, one of these courts argues that to permit a raise in the value of the aggregate of the property in a county is in effect to say that every property owner in the county has perjured himself and that the assessor has violated his oath of office in each instance. The court deprecates any such presumption, and overlooks the fact that, where certain *classes* of property have been under valued, this distasteful presumption attaches to only a part, and perhaps only a small part, of the people, and that to equalize by averages is to change every assessment and impute perjury to every taxpayer.

All sorts of evils have been supposed by many of the courts to follow from a plain interpretation of our statute, or similar ones, and they have been led thereby into, to say the least, ridiculous conclusions.

We contend that our statute is clear and unambiguous as to the powers of the Territorial Board, and that that interpretation is not to be avoided by any imaginary abuses of powers that might flow from them.

These powers were given to correct palpable, flagrant evils such as those admitted in this case. To say that they may be abused is no more argument to deny the power than to say that a court may abuse its powers and hence it should be abolished, or its acknowledged powers

revoked. There is a remedy if the Territorial Board abuses its powers—it is enough to say that it is not pretended that it has in this case.

Cooley on Taxation (3rd Ed.) 56
Id. 475

For eighteen consecutive years, from the time of the enactment of our law until now, the Territorial Board of Equalization has assumed and exercised the right and power:

1. To raise or lower the valuation of specific classes of property as returned to it by the several counties, and

2. In each and every one of these years to so raise such valuations that the aggregate value of all the property in the Territory was raised.

It appears by the tabulated scales of valuations returned by the county officers in 1905 (R. p. 16) that in Yavapai county cultivated lands were valued by the county officers at 50 per cent of their value; that the improvements on those lands were valued at 50 per cent; unimproved lands at 75 per cent; land grants at 40; town and city lots at 60; improvements on town and city lots at 60; range horses at 70; work horses at 70; saddle horses at 70; asses at 70; range cattle at 75; beef cattle at 50; milch cows at 50; sheep at 60; goats at 60; swine at 50; railroads at 50; merchandise at 33⅓; all other kinds of property except mines at 30; and patented mines at *three per cent of their value.* In other words patented mines were valued for the purposes of taxation by the county officers at a percentage of their actual value, about one-seventeenth of the percentage of valuation of cultivated lands, improvements on lands, beef cattle, milch cows and railroads; one-twenty-fifth of the percentage of

valuation of uncultivated lands, railroad lands and range cattle; one-thirteenth of the percentage of valuation of land grants; one-twentieth of the percentage of valuation of town and city lots, improvements on town and city lots, sheep and goats; one-twenty-third the percentage of valuation of range, work and saddle horses and asses; one-eleventh of the percentage of valuation of merchandise and other property not classified; and one-third of the percentage of valuation of the improvements upon patented mines.

The average valuation of cultivated lands in all the counties is (omitting fractions) 64 per cent of its cash value, about 21 times the percentage of valuation of patented mines, as returned, in Yavapai county. The average ratio of valuation of town and city lots in all the counties as returned to the Territorial Board is (omitting fractions) 76 per cent of their cash value, or more than 25 times as much as the ratio of valuation of patented mines in Yavapai county. The average ratio of valuation of range cattle in all the counties is 75 per cent or nearly 25 times as great as that of patented mines of Yavapai county. The average ratio of valuation of sheep in all the counties is (omitting fractions) 60 per cent, or 20 times as great as that of patented mines in Yavapai county. And we might continue the comparison throughout the various counties. These inequalities are not disputed, and are not to be successfully contradicted. No comment, it would seem, is necessary. The inequality is so great that its injustice is at once suggested. But just such inequalities may be expected, differing possibly only in extent, where each county fixes, without review, the valuation of property within its limits. A glance at the scale shows inequalities in the same class of property in the various

counties. They should disappear. Justice requires that they should be equal, otherwise the burden of Territorial taxation will be unequally borne. Whatever the causes of these inequalities may be there should be some method of their correction. It is true that if the statute were followed and property was assessed at its full cash value, complete equalization would result and neither a local nor a territorial board would be needed.

But we know that property is not so assessed, that it is not as a rule assessed at its full cash value, and the Legislature had that in view when it attempted to make provision for the correction of inequalities from an almost universal departure from the rule of assessing at full cash value. It is important that each individual should be relieved of burdens put upon him by these inequalities. It is just as important to him that the valuation of property of another class shall be as fairly made as that of property in the class of which he may be the owner. If he be a cattle owner it is unfair to him, and violates the law, if his cattle be valued at 70 per cent of their cash value and that patented mines, or horses, should be valued for only 10 per cent of their value. It would be a gross injustice that one or more classes of property should be assessed at a large proportionate valuation and another class should be assessed at a greatly less one. It has been known that inequalities have existed in valuations of classes of property, and it has been recognized as an evil for which the Legislature, not only of this, but of other States and Territories, have sought to supply a remedy.

Some States have attempted to remedy the evil of low assessments by providing for a Board of Equalization which shall deal with the aggregate of the values of

property in the several counties. But this is so palpably inequitable, so certainly makes inevitable the perpetuation of the evil, that those systems are not to be approved. It certainly is not fair, if it be shown that in a given county every class but one of property is valued at a high rate, and that one class is assessed at a low one, that a raise upon the aggregate should be made for the purposes of equalization. This does not equalize—it is precisely the reverse of it, and emphasizes the original wrong. What principle of justice would suggest that, if every class but one of property in Yavapai county was assessed at 75 per cent. of its value and that remaining one was assessed at only 1-25th of its value, then all the property in that county should be raised a given ratio to effect an equalization? Such a procedure not only leaves the inequality, but inflicts a penalty upon those property owners whose property was assessed at a high rate—not for any wrong of theirs but for a wrong committed in the gross undervaluation of property other than their own. Such a law, if there were one, condemns itself as violating the fundamental principles of just taxation.

Again, it is well known that, not only in Arizona but in nearly every State in the Union, there are certain classes of property that seem favored by local taxing officers. No matter what the motive may be, it is a fact so well known that it is a public scandal. No one has the temerity to contend that the patented mines of Yavapai county, or of any other county, should be assessed at a rate of only 1-20th of that of city and town lots in that county.

Our legislature attempted to devise a precedure to secure uniformity of taxation, such that when, in its administration, if for any cause this uniformity is destroyed, it may

be restored by a board of review, removed from those local conditions which made these inequalities possible.

The evil is palpable; it was fully known to the legislature.

The Statute under consideration is to be liberally construed

In England and in many of our states the courts have said that tax laws should be strictly construed. Without entering into the refinements indulged in by the courts to note the difference between "strict" and "liberal" construction of statutes we may, we think, accurately enough, say that a strict construction is one which (notwithstanding a complete knowlege of the evil sought to be remedied by the enactment) if a construction can be fairly given a statute that results to defeat its purpose, it must be done. "Liberal construction" we understand to be, that where the evil sought to be remedied is known, the statute enacted to effect the relief shall, if it can be, construed to accomplish this.

The English cases, and those American cases following them, proceed upon the theory that a tax is an exaction from unwilling subjects and hence all tax laws must be "strictly construed" That might be, in a monarchical form of government, but it is not American. Here, rather, a tax might be held a willing contribution by every citizen to the support, of that government of which he is an active part, of which he not only shares the duties but the privileges; and all tax laws in America should have, as we deem they do have, for their purpose, not an exaction of dues, but a provision that contributions to the support of the government shall be uniform and equal. We can not conceive an American citizen a good citizen who seeks to

exempt himself from this contribution. We can not conceive that law a just law that makes possible an escape from this contribution. And of two possible interpretations of a statute designed to effect uniformity and equality of this contribution, the very genius of American institutions, as well as every principle of justice, demands that that one shall be adopted that effects that purpose.

In marked contrast with the English courts and certain of our own state courts, the Supreme Court of the United States and various of the Circuit and District courts consider tax laws to be remedial and to be liberally construed to effect their purpose of just distribution of the burdens of taxation.

There are many cases in the Federal Courts in which it has been declared that the revenue laws are not to be regarded as penal in the sense that requires them to be strictly construed, though they impose penalties and forfeitures. They have even been declared remedial in character.

Sutherland Stat. Construction, Par. 535.
Wood vs. U. S., 16 Pet. 342.
Taylor vs. U. S., 3 How. 197.
Cliquot's Champagne 3 Wall. 114.
In re Twenty-eight cases 2 Ben. 63, Fed. case 14281.
U. S. vs. Willets 5 Ben. 220.
U. S. vs. Hodson 10 Wall 395, and many others.

To the same effect are the following decisions from various states:

Revenue Statutes are not to be regarded as penal, and therefore to be construed strictly. They are remedial in their character, and to be construed liberally, to carry out the purposes of their enactment:

State ex rel. vs. Raine, 47 Ohio St. 455.

Haskel vs. City of Burlington, 30 Iowa 232.

Hudler vs. Golden, 36 N. Y. 446.

Cornwall vs. Todd, 38 Conn. 443.

Statutes relating to taxation are not penal, nor are they in derogation of natural rights.

Sutherland Stat. Construction 535.

Cornwall vs. Todd, 38 Conn. 443.

And the Supreme Court of New Jersey says :

"In laying the burden of taxation upon the citizens of the state, while it must be the object of every just system to equalize this charge by a fair apportionment and levy upon the property of all, it is equally the duty of the courts to see that no one, by mere technicalities, which do not affect his substantial rights, shall escape his proportion of the public expense and thus impose it upon others. A *liberal* construction must therefore be given to all tax laws for public purposes."

State vs. Taylor, 35, N. J. L. 184.

Bacon vs. Board of Tax Commissioners, 126 Mich. 22.

Salisbury vs. Lane, 7 Idaho 370.

And the Supreme Court of Arizona has repeatedly adopted that construction of our tax laws which make them effective instead of abortive.

Aztec Land & Cattle Co. vs. Navajo County, 80 P. 318.

Western Investment Etc. Co. vs. Murray, 6 Ariz., at page 224.

County of Cochise et al vs. Copper Queen Consolidated Mining Co. 71 Pac. 957.

And with these rules of construction we may with confidence examine our tax law. Uniformity is to be secured — does our statute effectively provide for it ?

The Statute in question clearly confers power to raise or lower the valuation of particular classes of property in particular counties and in so doing raise the aggregate of the valuations of property in all the counties.

[The paragraphs to which reference will now be made, are printed in full in the appendix].

Paragraph 3836, Stat. 1901, provides that all taxable property *must* be assessed at its full cash value, and declares that the term "cash value," whenever used in this title, shall be taken to mean the "amount at which the property would be taken in payment of a just debt from a solvent debtor."

Paragraph 3842 requires the assessor before entering upon the duties of his office to take an oath that he will assess all property at its "just cash value."

Paragraph 3847 requires the assessor to determine the full cash value of all property and assess the same.

Paragraph 3861 requires him in making the assessment roll to set down therein the cash value of all property assessed by him.

Paragraphs 3865 to 3868 provide for the County Board of Equalization and define its duties and powers. Under Paragraph 3868 it may add to or deduct from the assessed value of any property, if in its judgment the value fixed in the assessment roll is too small or too large, whether such value is fixed by the owner or assessor.

Paragraph 3876 providing for appeal to the District Court declares that "the intent and purpose of the foregoing

section is to have all property and subjects of taxation fairly assessed, at the value which would be realized therefrom by cash sale, but not a forced sale, * * * and for this purpose the power conferred upon the court is to be liberally construed." But the court is expressly prohibited from reducing the valuation of any property below the fair cash value of the property, or what the property would sell for in cash.

Paragraph 3877 provides that the clerk of the Board of Supervisors, so soon as the Board of Equalization has adjourned in July, shall make an abstract of the assessment roll, classified, showing the total valuation of each class of property, and transmit the same to the Territorial Auditor. This paragraph also provides that the Territorial Board of Equalization shall add to or diminish the classification, and to require such other or further matters to be returned as it may deem advisable.

Paragraph 3881, provides that:

"On or before the fourth Monday in August in each year the Territorial Auditor shall transmit to the Board of Supervisors of each county a statement of the changes, if any, which have been made in the assessment by the Territorial Board of Equalization, and the rate of taxes which is to be levied and collected within said county for Territorial purposes."

From the foregoing it plainly appears that the Legislature intended to compel uniformity of taxation, on the basis of cash value, as it expresses that purpose repeatedly and peremptorily. Lest the assessor might fail in his duty, or err in judgment, the County Board of Equalization is created, with not only the power of original assess-

ment, but with the power to review and correct the anticipated errors or shortcomings of the assessor. But lest these boards might also fail, lest the machinery already provided for the attainment of that uniformity of valuation at a cash value might prove inadequate as to some whole class or kind of property required to be returned, the Legislature provided for the Territorial Board of Equalization, and clothed it with power to correct and review the proceedings of the county boards. In view of the gross and culpable failure of the local assessor to properly value patented mines, as is so clearly shown by the admitted facts in this case, the wisdom of the Legislature in thus perfecting the agencies through which its will should be accomplished and its defeat prevented becomes conspicuous.

Paragraph 3879 provides that the Territorial Board of Equalization "shall sit at the office of the Territorial Auditor on the second Monday of August in each year for the purpose of, and they are hereby authorized and required to examine the various assessments, so far as regards the Territorial tax, and equalize the rate of assessment in the various counties whenever satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the various assessors and Boards of Equalization."

The lawful "scale of valuation" in this Territory is the *cash value.*

Paragraph 3880. "The said board shall ascertain whether the valuation of property in each county bears a fair relation or proportion to the valuation in all other counties in the territory, and on such examination they may increase or diminish the valuation of property in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of

property in the territory; but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as returned by the Boards of Supervisors of the several counties. And said board shall at the same time fix the rate of taxes for territorial purposes which is to be levied and collected in each county."

Statutes of similar import have been enacted in various states and territories and their interpretation has varied widely in the different jurisdictions. The points of difficulty have been those which are relied upon by respondents in this case, *i. e.* whether the board may raise or lower the valuations of *classes* of property and whether in raising or lowering, either by classes or by aggregate values of counties, the board may raise the sum of all the valuations as returned by the various assessors and Boards of Equalization. Let us first consider what it means to "equalize."

It will first be noted that the Board is required to *equalize the rate* of assessment. That is, to see that the standard or proportion of valuation is, as nearly as possible, made equal throughout the Territory on all kinds and classes of property. This standard or rate is defined by law to be the *cash value.* "Our revenue laws," as the Supreme Court of Arizona says in the Copper Queen case (71 Pac. 947) "in conferring upon boards of equalization power to equalize assessments and to add to and increase the same confer a wide discretion upon such boards. This discretion must, however, be a sound one, exercised in good faith, with a view of carrying out the purpose of the law in enforcing equality of taxation and the assessment of property *at its cash value.*"

If, then, in the judgment of the Board, the cash value of any part of the assessable property of the territory has

been attained or fairly approximated in the assessment, no matter in what county or what class of property it may be, and all other property is assessed at a lower rate, it is the duty of the Board to equalize such lower valuations with the former. Such valuation is a standard, or *rate* to which all others must be adjusted. Is it within the power of the Board, under such circumstances to equalize by so lowering that property which is assessed at its cash value, and by so raising that which is not, that an equation of the difference is reached? Certainly not, for then the rule fixing the cash value as the standard would be violated. The Board can only equalize under such circumstances by raising the lower valuations to the *rate* of the higher.

Of course it might some time happen that a return would show an over-valuation. In such a case, of course, the Board would lower it but, even then, it would undoubtedly find so much more property undervalued that the equalization would still raise the aggregate. But the legislature has evidently forseen the extreme improbability of any general overvaluation, as well as the practical certainty that the reverse will be the rule, by commanding that *in no case shall the aggregate be reduced.* This certainly indicates a conviction on the part of the legislature that no considerable part of the taxable property would ever be assessed at more than its cash value. It seems clear that the legislature indulged the legal presumption that some of the local assessing officials would do their duty by returning at least some property or class of property at its cash value, and thus afford the Territorial Board a lawful rate or standard with which all other valuations might be brought into just relation. We have no doubt, however, that should it appear that all property had been returned at less

than its cash value, the Board would have the right, and it would be its duty to raise the valuation of all property in the Territory to that standard. The Board is given the power expressly to raise or lower valuations. There is a limitation on its power to lower—that it shall in no instance reduce the aggregate. There is no such limitation on its power to *raise*—the only one, express or implied, being that it shall not raise beyond the cash value. It is not pretended that this limitation so far as any class of property is concerned has been reached or even approached in the case at the bar. Let us suppose that the statute stopped with the granting of power to increase or diminish the valuation of property in any county as much as in their judgment may be necessary, etc. Could there be any question that the Board might increase or diminish the valuation of property in any county, and that without any regard to its effect upon the aggregate valuation of all the counties? The power to do so, whatever the effect of diminution or increase may have on the aggregate, is express, and could not have been given in stronger terms. It is complete. Now add the clause, "but in no instance shall they reduce the aggregate of all the counties." It is so plain that it is but a limitation upon the full power theretofore given to diminish that it is difficult to argue it. Without the clause it could increase or diminish the aggregate—the qualifying clause takes away the theretofore given power to diminish, and necessarily leaves the power to increase untouched and unaffected. "The Board may go to Prescott." In that there is no implied permission that it may go anywhere else. But put it in this way: "The Board may go anywhere on earth that it pleases but in no instance shall it go to Phoenix." It will be urged that the limiting clause that it may notre duce, somehow

affects the power to increase. By the same reasoning, while it is given power to go anywhere, yet by a limiting clause it is forbidden to go to Phoenix, *ergo*, it can not go anywhere and can only stay where it happens to be.

This brings us to the consideration of another phase of the statute—that the board is required to "examine the various assessments so far as regards the Territorial tax." For what purpose does the board make this examination if, after it has patiently and faithfully performed its duty, the Territorial tax is not changed by a single dollar? Is it conceivable that the Legislature has charged the board with the vain duty of adding here and subtracting there—with taking from one county or class and adding to another—without accomplishing either an increase or diminution, in the Territorial tax? We think not. Nor do we believe this argument is met by urging that by said provision the Legislature may possibly have intended to merely secure from each county its just proportion of the Territorial tax, without changing the total amount of taxes to be collected. In view of the fact that the board must not only equalize to the cash value standard, so that, measured by that standard, a just relation may be produced between all valuations of property in the Territory, but must do so with regard to the Territorial tax, the purpose of the Legislature that the board should exercise a real function with appreciable effect, becomes apparent.

The Power to Increase the Aggregate.

No further argument is needed to show that under the power conferred on the board to equalize, and, with the cash value as a standard, it may, as incidental to that power, raise the sum of all the valuations as returned by

the various assessors and local boards of equalization. The following authorities sustain this proposition :

State ex rel. Thompson v. Nichols, 69 Pac. 775.
State ex rel. Cunningham v. Thomas, 50 Pac. 615
Wallace et al. v. Bullen et al., 52 Pac. 854.
Kittle v. Shervin, 11 Neb. 66.
Renfrew et al. v. Webb et al., 54 Pac. 449.
Burdrick et al. v. Dillon et al., 54 Pac, 785.
Weber et al. v. Dillon, 54 Pac. 894.
Hacker v. Howe, 101 N. W. 256.

In State ex rel. Thompson v. Nichols et al., 69 Pac. 775 (Supreme Court of Washington, July 17th, 1902), the court says :

"It is earnestly contended by the learned counsel for the relator that the action of the state board of equalization herein complained of was not warranted by law, or, in other words, that the state board had no authority or power to raise the aggregate valuation of the property of the state as fixed by the several county boards of equalization, and transmitted to the state auditor by the various county auditors. And if this contention be true, in point of fact, it must be conceded that the act of the board was and is null and void, for it is a firmly established principle of law that boards of equalization, whether county or state, possess only such powers as are conferred upon them either by statute or the constitution. But so long as such bodies keep within the limits fixed by legislative authority, and violate no provision of the constitution, their acts are not subject to review by the courts. * * *

"Nothing but express constitutional limitation upon legislative authority can exclude anything to which the authority extends from the grasp of the taxing power, if the legislature in its discretion shall at any time select it for revenue purposes. And not only is the power

unlimited as to subjects, but in its very nature it acknowledges no limits, and may be carried to any extent which the government may find expedient. It may therefore be employed again and again upon the same subjects, even to the extent of exhaustion and destruction, and may thus become, in its exercise, a power to destroy.

"Cooley, Taxation (2d Ed. pp. 4, 5.)

"Decisions based on statutes essentially different from ours cannot be deemed of controlling force here, except in so far as they announce principles of law of universal application."

The court quotes from the statutes as follows:

"'The said board shall meet annually on the first Tuesday in September, at the office of the auditor of state, and shall examine and compare the returns of the assessment of the property in the several counties of the state, and proceed to equalize the same, so that each county in the state shall pay its due and just proportion of the taxes for state purposes for each assessment year, according to the ratio the valuation of the property of each county bears to the total valuation of all the property in the state. First. They shall classify all property, real and personal, and shall raise and lower the valuation of any class of property in any county to a value that shall be equal and uniform so far as possible, in every part of the state, for the purpose of ascertaining the just amount of tax due from each county for state purposes."

And continues:

"It is insisted, on the part of the relator, that the powers of the state board are restricted by law to a mere equalization of the aggregate valuation of the property in the several counties, as fixed by the county boards, and that it has no right or power to increase the total valuation of the property in the state so fixed upon it; and it is argued, in effect, that when the state board raised, as it did in this instance, the valuation of the property in some

of the counties of the state as returned to it by the respective county auditors, and adopted the valuations returned from other counties as the true and just valuations therein, it failed to exercise its proper functions, and assumed, without authority of law, to act in the capacity of assessor; that if the board deemed it proper and just to raise the valuations in certain counties, and accordingly did so, it was incumbent on it to decrease the valuations in the remaining counties in an equal amount, because in no other way could equalization be effected at all. And this position seems to be in accord with the ruling in the cases of People v. Lothrop, 3 Colo. 428; State v. State Board of Equalization, 18 Mont. 473, 46 Pac. 266; Wells, Fargo & Co. v. State Board of Equalization, 56 Cal. 194; and some others cited by counsel for the relator. The first two cases above mentioned are perhaps more favorable to relator's contention than any of the other cases cited by him, but both of those decisions are based upon *constitutional* and statutory provisions materially different from ours, and therefore cannot be considered as authoritative here. The decision in the Montana case, it will be noticed, was rested largely, if not wholly, upon the provision of the constitution of Montana, which had been adopted from the Colorado constitution after it had been interpreted by the supreme court of the latter state. The court proceeded upon the presumption that the framers of the Montana constitution 'were conversant with, and designed to adopt, also,' the interpretation given to the section in Colorado. See State v. Fortune (Mont.) 60 Pac. 1086. In the case last cited, the Montana court adhered to the doctrine announced in State v. State Board of Equalization, supra, but it appears that the chief justice concurred in the opinion for the sole reason that he considered himself bound to do so by the former decision of the court. He said: 'I concur in the foregoing opinion solely on the ground of stare decisis. If the question involved were a new one in this state I would be in favor of disregarding the construction given to the section of the constitution by the supreme

court of Colorado in People v. Lothrop, 3 Colo. 428, and followed in this court in State v. State Board of Equalization, 18 Mont. 473, 46 Pac. 266, as demonstratably wrong.' It was held in that case that the State Board of Equalization was without power to change the valuation of any class of property, its authority being limited to raising and lowering the entire assessment of a county. But such is not the case in this state, for our state board is not only authorized, but required, to 'classify all property, real and personal, and to raise and (or) lower the valuation of any class of property in any county to a value that shall be equal and uniform, so far as possible in every part of the state, for the purpose of ascertaining the just amount due from each county for state purposes.'

"Under the constitution and laws of Utah, which are almost identical with the provisions of our constitution and statutes on the subject in question, the supreme court of that state, in the case of State v. Thomas (Utah) 50 Pac. 615, held that the State Board of Equalization had power, if necessary, for the purpose of equalization, either to raise or lower the aggregate valuation of all the counties in the state. That case is a well considered one, and the decision therein is, in our judgment peculiarly applicable to the base at bar."

In State ex rel. Cunningham et al. v. Thomas et al. State Board of Equalization, 50 Pac. 615. (Supreme Court of Utah. Oct. 2, 1897.) It is said:

"The most important question to be determined is whether the State Board of Equalization has the power to so raise the total valuation of the property of any county in the state as to increase the aggregate valuation of all the counties of the state, as returned, to the state board, by the several county assessors and county boards of equalization. On behalf of the relators it is contended that the powers of the state board are limited, by provisions of the constitution of and statutes, to an adjustment and equalization of the total valuation of the several

counties, as fixed by the assessors and county boards, and that it has no power to increase the aggregate valuation of the property of the state so placed upon it. For the defendant board it is insisted that it has power to raise or lower the total valuation of the property of the state, so as to render the assessment equal and uniform in the several counties, and to make it conform to the true value, in money, of the property assessed.

"The provisions of the constitution, so far as material to the decision of this case, are as follows: In section 2, of article 13, it is provided that 'all property in the state, not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law.'

"If this provision were to be considered by itself, it might be contended with some force that the legislature had power to provide that all property should be assessed at a basis less than its full value, and this might still be considered as "in proportion to its value." The real intent, however, of the framers of the constitution, is made more manifest in section 3, of article 13, which contains this language: 'The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe by general law such regulations as shall secure a just valuation for taxation of all property; so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property.' This provision is closely related to the one in section 2, and directs the legislature not only to provide a uniform and equal rate of assessment and taxation, so that every subject owning property shall pay the same rate of tax as every other subjects, but also declares that all property shall be assessed at a basis which shall be 'according to its value in money.' It is evident that the term 'according to its value in money' means that all property shall be valued, for the purposes of assessment, as near as is reasonably practicable, at its full cash value; in other words, that the valuation for assessment and taxation shall be, as near as

reasonably practicable, equal to the cash price for which the property valued would sell in open market, for this is doubtless the correct test of the value of the property. The manifest intention is that all taxable property should bear its just proportion of the burdens of taxation. These two sections of the constitution harmonize with each other; and by reading and considering them together, it becomes clear that all taxable property within this state must be assessed and taxed on a valuation fixed at its actual cash value, or as near such value as is reasonably practicable.

"In order, it would seem, to guard against unjust valuations which might result from whatever cause, and to secure greater uniformity and equality in taxation, it was provided in section 11 of the same article as follows:

" 'The duty of the state board of equalization shall be to adjust and equalize the valuation of the real and personal property among the several counties of the state. The duty of the county board of equalization shall be to adjust and equalize the valuation of the real and personal properties within their respective counties. Each board shall also perform such other duties as may be prescribed by law.' By this section are created the state and county boards of equalization, and their duties defined. Under its provisions, the controversy in this case mainly arose.

"The provision relating to county boards was before us in the case of Salt Lake City *v.* Armstrong, 49 Pac. 641; and we there held that the county board of equalization might raise or lower the valuation of any class of property in the county, or of real estate in any particular locality, for the purpose of adjustment and equalization of values.

"The action of that board is not restricted to the total valuation made by the assessor. Evidently, its duty is to adjust and equalize the valuation of the property within its county. Its action is therefore confined within the limits of the county; but, within such limits, it has power to raise or lower the individual assessments, so as to make the valuation uniform and equal.

"It has the right to determine the value of property, and, if necessary for the purpose of equalization, may

raise the valuation of one district, and lower that of another, even though by such action the total valuation of the property of the county may be increased or decreased.

"What has been said respecting county boards applies with equal force to the state board, except that it may not encroach upon the domain of the county board in an attempt to adjust and equalize the valuation of property within the county. With this exception, it will be observed that the constitutional duties and powers of the state and county boards contained in this section are precisely the same. When the same duty is imposed, and the same power exists, there the same result may be expected, as intended, from the performance of such duty, and the exercise of such power. How, then, can it be maintained that the state board cannot increase the total valuation of the state when necessary for the purpose of equalization, while the county board may, for such purpose, increase the total valuation of the county, even though it may thereby increase the aggregate valuation of the state? It is true, the action of the state board is confined to counties as component parts of the state, while the action of the county board extends directly to the valuation of the property of the individuals of the county; but the plain duty of each is to adjust and equalize the valuation, so as to make it uniform and equal on all taxable property, according to its value in money. Suppose the property in all the counties of the state, except one, had been assessed, by the assessors and county boards, as its actual cash value, as required by the constitution, and that the property in the one was assessed at only half its cash value; how could the state board, in accordance with its sworn duty, adjust and equalize the valuation, so that all taxable property in the state would be assessed at its value in money, if the board had no power to raise the aggregate valuation? To state the proposition is sufficient to demonstrate the impracticability of the contention of the relators, and the impossibility of a compliance with the requirements of the constitution, the provisions of which are mandatory and binding

equally upon the legislature, the courts, and all officers of the government. The courts have no power to override these provisions, or explain away their effect and operation by judicial construction. Whether the creation of a state board of equalization, with such power, was a wise thing for our constitution makers to do, or whether it constitutes the board a board of assessors, does not concern us. It is sufficient to say that the power exists.

"Having considered the above constitutional provisions, it becomes important now to examine the statutory enactments, so far as applicable to this case, to ascertain whether the state board, in making the order complained of, acted within the jurisdiction and power conferred by the constitution and statutes.

"SECTION 5: 'All taxable property must be assessed at its full cash value. Land and the improvements thereon must be separately assessed.'

"The statutory powers of the State Board are then given:

"'At such meetings to equalize the valuation of the taxable property of the several counties in this state for the purpose of taxation; and to that end, under such rules of notice to the county auditor of the county affected thereby, as it may prescribe, to increase or lower any assessment contained in the assessment book, so as to equalize the assessment of the property contained therein, and make the assessment conform to the true value in money of the property assessed.'

"While it is the sworn duty of these officers to value and assess all taxable property equally and uniformly, at its full cash value, yet current history does not fail to present the fact that, through mistake, carelessness or incompetency, the grossest inequality frequently prevails in valuations; and, without a power lodged somewhere to adjust and equalize the valuations, not only might great injustice result, but also the constitutional requirements of a "uniform and equal rate of assessment and taxation on all property in the state" might be rendered a nullity.

"We are therefore of the opinion that the state board has jurisdiction in the premises, and authority, if necessary for the purpose of equalization, either to raise or lower the total valuation of the property of any county, fixed by the county board and assessor, even though it may by such action raise or lower the aggregate valuation of all the counties in the state."

In Wallace et al. vs. Bullen et al., (Okl.), 52 Pac., 854:

Tarsney, J. (after stating the facts):—The contention of defendants in error is that the action of the Territorial Board of Equalization in raising the valuation of the property in Noble county 35 per cent,, and in all the other counties in the Territory, except the county of Kingfisher, thereby increasing the aggregate of the value of all the property returned for taxation in all the counties of the Territory over the valuation fixed and returned by the several boards of county equalization to the amount of about $11,000,000, was without authority of law; that part of the taxes levied upon the property of defendants in error, which resulted from such increased valuation, was levied without authority of law, and is therefore void; * * * Was the action of the Territorial Board of Equalization complained of without authority of law?

"'The Governor, Territorial Auditor and Secretary shall constitute the Territorial Board of Equalization and said Board of Equalization shall hold a session at the capital of the Territory, commencing on the 3d Monday of June of each year; and it shall be the duty of said board to examine the various assessments and to equalize the same, and to decide upon the rate of Territorial tax to be levied for the current year, together with any other general or special Territorial taxes required by law to be levied, and to equalize the levy of such taxes throughout the Territory. And shall therefrom find the percentage that must be added to or deducted from the assessed value of each county, and shall then order the percentage so found to be be added to or substracted from the valuation of property in their

respective counties.' * * * These several officers and boards may be said to comprise the machinery of the law for exercising the taxing powers of government. Each must act within the special scope of his or its authority, and, when so acting, the *only limitation* that we can discover to the combined authority and jurisdiction of all *is that their imposition of taxation must be equal and uniform.* In assessing, they must not fix values higher than the true cash values of the property assessed; and, in levying, they must not levy a higher rate than that limited by the law. In other words, the general scope of the jurisdiction and powers of the taxing authorities is to impose taxation upon property assessed at its true cash value, and at a rate not exceeding the maximum fixed by law; and when the authorities have proceeded and acted within the scope of their authority as thus defined, and the property has not been valued for taxation beyond its true cash value, or a greater rate of taxation levied upon such value than that authorized by law, the owner has not been injured, and cannot be heard to complain, provided his property has been taxed equally and uniformly with other property in the taxing district. * * * *

"Counsel for defendants in error, while conceding that the board may increase or diminish the aggregate valuation of any county for the purpose of equalizing such valuation with the valuations of the other counties, yet contend, in the words of the statute granting it, the power 'to examine the various county assessments, and to equalize the same,' limits and restricts the powers of said board to equalizing and adjusting valuation already fixed; that the term 'assessments' is synonymous with 'valuations,' and here imports values already determined; that such valuations already fixed are the aggregate of material with which the board could deal; that they may adjust, equalize and distribute this aggregate of valuations among the several counties, but that they cannot add to its volume. In support of this construction, we are cited to the cases of People *vs.* Lothrop, 3 Colo. 428; Kittle *vs.* Shervin, 11 Neb. 66, 7 N. W. 861; State *vs.* Edwards, 31 Neb. 370, 47

N. W. 1048; Kimball *vs.* Trust Co., 89 Ill, 711; Orr *vs.* State Board (Idaho) 28 Pac. 416. A careful analysis of these cases will lead to the conclusion that none of them, unless it be the Colorado case, will even apparently support the contention of defendants in error."

"In Kittle *vs.* Shervin, 11 Neb. 66, 7 N. W. 861, the city council, the city of Freemont, sitting as a board of equalization, without any notice to the taxpayers or to the plaintiffs, raised the assessed value of each and every assessment in the city 10 per cent above the assessed value made by the assessor, and the valuation of the plaintiff's premises and all property in said city was 10 per cent. higher in its assessed value than the same was for state and county purposes assessed. The relative value of the property assessed was not changed. The Court held that the city council, sitting as a board of equalization, had no power to thus raise the assessed value of all the property assessed in said city; that such raising of valuation was not equalizing in any sense. We have already shown that the powers of a city or township board of equalization is limited to action upon individual assessments. Consequently they have no authority to increase the value of the aggregate of assessments in the city or townships by a uniform percentage, and the principle of that case bears no analogy to the case before us. In State *v.* Edwards, 31 Neb. 370, 47 N. W. 1048, the court construed and applied a statute of the state which in express terms prohibited the board of county equalization from reducing or increasing the aggregate valuation fixed and returned by the assessor, except such increase or reduction as should be incidental merely.

"In the case cited from the Supreme Court of Idaho (Orr v. State Board, supra.) the State Board of Equalization was by statute invested with power 'to raise or diminish the valuation of the several counties,' but the manner in which this should be done was clearly directed by the statute as follows: 'First, they shall add to the aggregate valuation of real and personal property of each county which they believe to be valued below its proper

valuation such percentage in each case as will raise the same to its proper valuation;' and 'second, they shall deduct from the aggregate valuation of real and personal property of each county which they believe to be valued above its proper value such percentage in each case as will reduce the same to its proper valuation." The powers of the board were clearly limited by the statute. They were authorized to raise or diminish the valuation of the several counties, but only in the manner directed by the statute, viz. they might add to the aggregate valuation of property of each county which they believed to be valued below its proper valuation, or they might deduct from the aggregate value of the property of each county which they believed to be valued above its proper valuation. The board in that case undertook to add to the valuation of the sheep in Bingham county an amount sufficient to fix a valuation thereon at the sum of $2.50 per head. * * * * The court in that case held correctly, as we think it must be conceded, that, under the special restricted authority to equalize valuations between the several counties by adding to or subtracting from the aggregate valuation as returned by the assessor and county board of equalization by a certain percentage, no authority could be deduced therefrom authorizing such board to increase or diminish the valuations fixed upon specific classes of property, and hence we find nothing in that case bearing in any manner upon the principle contended for in the case before us.

"The case of Kimball v. Trust Co., 89 Ill. 161, arose under a statute which provides as follows: 'It (the county board) shall ascertain whether the valuation in one town or district bears a just relation to all the towns and districts in the county, and may increase or diminish the aggregate valuation of property in any town or district by adding or deducting such sum upon the hundred dollars as may be necessary to produce a just relation between all the valuations of property in the county.' Rev. St. 1874, p. 873, par. 97, subd. 4. It further provided that such board should not in any instance reduce or increase the valuation

of all the towns and districts as made by the assessor, except in such manner as might be actually necessary and incidental to a proper and just equalization. The complainant in that case, in the spring of 1887, returned to the assessor of the town of South Chicago a statement of the personal property liable to taxation, and placed upon it a valuation of $500,000. It was so returned to the county clerk, without modification. The county board of equalization added 20 per cent to the assessed valuation of personal property in the town of South Chicago, but made no changes in other towns. The per cent added to personal property in South Chicago increased the aggregate value of assessed property in that town over $2,000,000, and consequently increased by a large per cent the aggregate assessed value of the entire property of the county. The 20 per cent added by the country board to the valuation of the complainant's property increased that valuation to $600,000. The state board of equalization directed that 57 per cent be added to the assessed value of personal property in Cook County, and thus the valuation of complainant's property was raised by the county board from $500,000 to $600,000, and by the state board to $942,000, and upon this latter sum was computed and extended the several kinds of taxes for the said year. *No question was raised or discussed in the case relating to the action of the state board in raising the assessment 57 per cent.* That appeared to be conceded as authorized and legal. The question was in regard to the action of the county board in making the 20 per cent increase, and that was held to be illegal because of the limitations of the statute upon the powers of a county board. * * * * Each of these cases is dissimilar in almost every feature from the case before us. Each dealt with the powers and functions of minor boards of equalizations (except the Idaho case), those of counties or cities not possessing final powers of review and correction, whose authority to increase or diminish the aggregate of valuations of property for taxation within their respective districts was by statute expressly inhibited or expressly granted and limited.

"The case cited from the Colorado court more apparently bears out the contention of defendants in error.

* * * * * * * * * *

"* * * True, the general definition of their duties is substantially the same: In our statute, 'to examine the various county assessments and to equalize the same'; in the Colorado constitution, 'to adjust and to equalize the valuation of real and personal property among the several counties of the State.' Our Territorial board is authorized to find the percentage that must be added to or deducted from the assessed value of each county, and to order the percentage so found to be added to or subtracted from the assessed values of each of the various counties of the Territory—'to be added to or deducted from the assessed value of each county.' The natural construction of this language would authorize the percentage which the board should find proper to be added to the assessed value of each or every county in the Territory, or to be subtracted from each or every county in the absence of any inhibition against increasing or diminishing the aggregate of assessed value. We think this was the intention of the Legislature. Had they intended to vest the board with power to equalize only in the sense of distributing equally among the several counties their proportion of the aggregated valuation returned, this would necessitate *both increase and decrease*, and the Legislature would have used language more apt to express such limitation or purpose Under the Colorado statutes, the board dealt only with the 'scale of valuation'. They were only authorized to act when they were satisfied that the 'scale of valuation had not been adjusted with reasonable uniformity' by the assessors. In this Territory, the board, we think, is authorized to act, not on the scale of valuation as returned and for the purpose of securing uniformity in such scale, but upon the *valuation* for the purpose of securing an honest and uniform valuation of property for taxation,—that honest and uniform valuation which the law expressly demands; that is, its assessment and valuation at its true cash value. * *

"We are supported in the conclusion we have arrived at in this case by the authority of Black v. McGonigle, 103 Mo. 192, 15 S. W., 615. * * * In that case Mr. Chief Justice Black says: 'The first contention of the appellant is that the action of the board in raising the assessed values of real estate in all the townships except one, by a single order on a per centum basis, is illegal and void. The proposition contained in this objection must, of course, be determined by the statute. Section 6672, Rev. St. 1879, gives to the board power 'to hear complaints, and to equalize the valuation and assessments upon all real and personal property within the county,' and it is then made the duty of the board 'to equalize the valuations and assessments in all such property, both real and personal, so that each tract of land shall be entered on the tax book at its true value.' * * * The law, however, clearly contemplates that all property shall be assessed *at its true value*, and if, in the opinion of the board, this has not been done, then the assessment may be increased so as to comply with the spirit and intention of the law. Where the lands in one township have been assessed at their true value, and those in another township have been assessed at a uniform lower rate, then the assessed value of the lands in the latter may be brought up to the standard of the former; and that is what appears to have been done in the present case. In such a case it is not necessary to specify each parcel of land thus increased. It is sufficient to increase the assessed value of all the lands in the particular township by one order, and this increase may be made on a per centum basis." * * * We hold that the statute creating the territorial board of equalization conferred upon that board authority to review and correct the valuations of property for taxation returned to them by the county clerks of the several counties of the territory, and to *equalize such valuation* upon the basis of the true cash value of the property, and that they may lawfully increase the aggregate valuation of property in the several counties of the territory returned by the said

several clerks of the several counties; that the several acts of said board complained of in the petition in this cause were within the jurisdiction of said board, and authorized by law; that the taxes the collection of which is sought to be enjoined were assessed and levied according to law."

In Renfrew et al. v. Webb et al., Webb et al. v. Renfrew et al., 54 Pac. 449, the Supreme Court of Oklahoma holds:

"The territorial board of equalization, in equalizing the taxes between the several counties, may take the return of any one county, which, in its judgment, most nearly represents the true cash value of all the property therein, as a basis, and may lower or raise the valuation as returned from any or all of the other counties, so as to make such valuations conform to such basis, notwithstanding that by such action the aggregate valuations of all the counties as returned may be increased or decreased; and a county board may, in like manner, take one township as a basis, and raise or lower the returned valuations of the other townships thereto, notwithstanding such action may increase or decrease the aggregate of valuations returned from the several townships.

"The limit of valuation of property for taxation is the actual cash value thereof. Any assessment of property for taxation in excess of its actual cash value is, to the extent of such excess, void. Where cattle of a taxpayer are of a value not exceeding $10 per head, and the same are, by the assessor, fraudulently, and for the purpose of causing an excessive tax to be levied thereon, assessed at $17.33 per head, and in equalizing the valuation of such property the county board of equalization increases such valuation 20 per cent., and the territorial board of equalization increases the same 40 per cent., a court of equity has power to relieve from all such assessment in excess of the actual cash value of the property."

In Bardrick et al. vs. Dillon et al., (Okl) 54 Pac. 786, it is said:

"The first contention of counsel for plaintiffs in error is that in exercising its power of equalizing the assessments of the several townships the county board had no power to increase the aggregate assessment of the county as shown by the total of the several township returns. A similar question was before this court in the case of Wallace *vs.* Bullen (decided on rehearing at this term), 54 Pac. 974, relating to the powers of the Territorial Board of Equalization, and was decided adversely to this contention. * * * There is no one subject that has received more attention at the hands of the courts than that of taxation in some of its various phases; and while a few settled rules pervade all the adjudicated cases, an exploration of the vast labyrinth of adjudications by the courts of last resort in the several States and Territories discloses the fact that one jurisdictions can derive but little aid from the decisions of another on these subjects. Each State has its own particular constitutional provisions and limitations, and its special modes of procedure. In most all, some form of appeal or review is provided for the relief of the taxpayer whose property is excessively or improperly assessed. Each has, by some form of legislative enactment, conferred certain specific powers upon its assessing officers and equalizations boards, and surrounded them with such limitations and restrictions as they have deemed prudent and judicious. These legislative provision all being more or less at variance with each other, leaves each jurisdiction to depend upon its own constitutional or statutory provisions and limitations for determining its powers and duties. * * * *

"After the returns are made from all the townships, the statute provides that the board of county commissioners shall hold a session at a fixed time 'for the purpose of equalizing the assessment rolls in their county between the several townships.' * * * This statute prescribes the power of the county board, but makes no provision as to the manner or method in which it shall perform that duty or execute the power, nor does it place any limitation on its power. The board is simply empowered to equalize the

various township rolls. Now, what does this word 'equalize' mean? It has no technical or scientific meaning. It is a word used in every-day parlance, and it is here used in its common and ordinary sense and acceptation. The purpose of having equalizing boards is that all classes of property, all parts of the taxing district, and all persons owning taxable property may bear equal burdens, and to secure equality as near as may be, under a general law. In Webster's International Dictionary "equalize" is defined, "To make equal, to cause to correspond, or be like in amount or degree as compared; as to equalize accounts, burdens, or taxes." The Century Dictionary and Cyclopedia gives this definition: "To make equal, cause to be equal in amount or degree as compared; as to equalize accounts, to equalize burdens or taxes." The word "equalize" is not found in the law dictionaries of either Bouvier or Black, but Black defines "equality" (which is the end to be reached by equalizing) as "likeness in possessing the same rights, privileges, and immunities, and being liable to the same duties." *There is nothing in the etymology, origin, or derivation of the word "equalize" that signifies any such meaning as that contended for by plaintiffs in error*, and no lexicologist, philologist, or law writer has ever attempted to impute such meaning to the word. * * * * Our statute contemplates that all taxable property shall be valued for purposes of taxation at its fair cash value; and all assessing officers and equalization boards are bound, when performing the duties imposed on them, to keep this fact in view, and not fix such values or make such additions for purposes of equalization as will increase property beyond its fair cash value. * * * * In making these additions, the aggregate valuation, as shown by the assessors' returns, was materially increased. This manner of executing the power conferred by the statute was not an unreasonable one, and is not open to any valid objection. * * * * * * *

"* * * We have carefully examined the numerous authorities cited by counsel for plaintiffs in error, which,

it is contended, support their contention to the effect that, in order to equalize tax rolls of different townships, the board must adopt the mean or average assessment as a standard, and reduce the higher and raise the lower to this mean standard without increasing the aggregate valuation as returned by the assessors. While a casual examination and reading of these cases might lead one to this conclusion, a critical examination of the decisions and of the statutes upon which they are based discloses the fact that, in every case where a court has laid down such a rule, it has been by reason of some *constitutional* or statutory provision defining or limiting the powers of the boards of equalization, and in no case has any court based such a ruling upon any definition or significance of the word 'equalize.' Our statute contains no such limitations as are found stated as the grounds for these decisions. Hence the adjudicated cases relied upon have no application to the statute here under consideration, and afford but little light in interpreting its provisions. The reasoning and argument in Gray v. Stiles (Okl.) 49 Pac. 1083, is hereby expressly disapproved, and, in so far as that case presents any rule of law in conflict herewith, the same is overruled. * * *"

In Weber et al. v. Dillon, County Treasurer, (Okl.) 54, Pac. 894, the court says:

"It (the petition) alleges that the territorial board, without any authority of law, in equalizing the several counties of the territory, increased the aggregate assessment of the territory from $24,000,000 to $32,000,000; that, in increasing the aggregate assessment of the territory from $24,000,000 to $32,000,000, the said territorial board raised the assessment of Blaine county 65 per cent, which raise, for Blaine county, amounted to the sum of $151,321, making the total assessment $384,122, instead of $232,801; that by such territorial raise the assessed value of each of plaintiffs was increased 65 per cent above its true cash value. * * *

"In this case we hold that the territorial board of equalization did not exceed its power in increasing the aggregate returns of the various counties of the territory, but that its action was clearly within the scope of its authority."

In Hacker v. Howe, (Neb.) 101, N. W. 256, the court says:

"The state board cannot, under the guise of equalization, raise valuations merely for the purpose of making increases, but when an increase results incidentally in the equalization of property, so that all property may bear its just proportion of the burdens of taxation, such resulting increase is within the legitimate exercise of the power to equalize. Surely it may not be said that, it having been ascertained that so nearly all of the property of the different counties has been assessed at its true value, in order to properly adjust and equalize there must be a reduction of a certain percentage in this larger number of counties, and a corresponding increase, and less than was ordered, in the smaller number, so that the grand total of the assessment roll should not be disturbed. While a plan or method of raising some of the counties and lowering others may generally be resorted to in order to bring about equality, yet it would, *in the present instance* be in a measure a perversion of the law to reduce *below its actual value* by far the larger proportion of the property of the state subject to taxation for the purpose of avoiding an actual increase in the total valuation of all property. The statute does not limit the state board in the matter of equalization to the aggregate value as shown by the returns of all the different counties. Its provisions are that the board may increase or decrease by percentum to be added to or deducted from the *aggregate* value of the different counties to make them conform to law. Of course, they have authority only to equalize, and to equalize is to adjust differences in value so as to bring all to a common standard, and to the end that all property

assessed shall bear its just proportion of the burdens of taxation. *Where equalization is the main object*, and the increase resulting therefrom is incidental, we think the action is undoubtedly a legitimate exercise of the powers conferred upon the board."

To the same effect see

People v. Orr. (Idaho) 28 Pac. 416.
People v. Dunn, 59 Cal. 328.
Baden v. Union Trust Co., 25 Kan. 363.

The statute under which the decision in Baden v. Trust Co. was rendered is as follows:

"SEC. 79. It shall be the duty of said (state) board to proceed to examine the abstracts of property assessed for taxation in the several counties of the state, and shall equalize the same by directing to be added to the amount of property so assessed in each county, or to be deducted therefrom such rate per cent as said board may deem equitable, but said board shall not reduce the aggregate amount."

And the Court said:

"The board having before it all assessments for taxation made upon all the taxable property, within the state, may, under the provisions of the foregoing section, equalize such assessments by increasing or decreasing the assessments made on any particular portion of the property, provided such equalization does not reduce the aggregate amount of the assessment."

And it seems that this principle is approved in New Mexico.

Territory vs. First National Bank of Albuquerque
65 Pac. 172.

Under a statute prohibiting the state board from reducing the aggregate, it is held in Ohio that the board may raise it.

State ex rel vs. Raines, 47 Ohio St. 447.
State ex rel vs. Lewis, 64 Ohio St. at p. 232.

In the latter case it was held that "no restriction is placed upon the manner of forming that opinion (the true value in money of the property) when it comes to *raising* the valuation, only so that it be to such sum or price as they may believe to be the true value thereof."

Our statute provides that the board may "raise *or* lower"—but not raise *and* lower.

The board, under paragraphs 3879-80, is *expressly* granted the power to *increase* or *diminish* the valuation of property. The only limitation upon the manner or extent of raising or lowering is that *it shall not reduce the aggregate.* The exclusion of this power is the inclusion of all other things.

Hankin v. People, 106 Ill. 633.

What is implied in a statute is as much a part of it as what is expressed.

U. S. v. Babbitt, 1 Black 58.

The power to increase or decrease the valuation of a class of property.

One of the most significant provisions of our statute is that which requires that the clerk of the County Board of Equalization immediately after the adjournment of its July meeting shall make an abstract of the assessment

roll, containing the whole number of acres of land other than city and town lots, and the valuation thereof; the value of the improvements thereon; the total valuation of city and town lots; the valuation of the improvements thereon; the miles of railroad in the county, and the value thereof; the number of horses and their total value; the number of mules and their total value; the number of asses and their total value; the number of cattle and their total value; the number of sheep and their total value; the number of swine and their total value; the number of goats and their total value; the gross amount of all other property, and transmit a duplicate thereof to the territorial auditor (Par. 3877 R. S. 1901). That paragraph further provides "that the Territorial Board of Equalization is authorized to diminish or add to the above list."

What can be the purpose of this classification? It is certainly not simply to gratify the curiosity of the board, nor is it merely for statistical purposes. The abstract is to be supplied to the board as the basis upon which it can equalize the valuations. If that board could deal only with the aggregate value of all the property, why classify, and why authorize the board to add to the list?

Under the contention of appellant the board may examine into the valuation, say, for illustration, of horses in the various counties, and, if it should find that horses were valued too low in a county, either in fact or relatively, to those in other counties, then charge the deficit to all the property in that county. Suppose horses in a county are found to be valued at 10 per cent of their cash value, while the average in other counties is 75 per cent of their cash value, and suppose all other property in the county is fairly valued. In order to remedy the

inequality resulting from the under valuation of horses in a county, the rule contended for by appellant requires not that the valuation of horses in a county shall be raised to the average standard of value, but that all property in a county shall be raised. The absurdity of this is apparent. Such a rule in the first place does not raise the valuation of horses in a county to the standard in other counties, but it does raise the value of all other property in that county, which, as we have supposed, was already up to the standard of other counties. Is that equalization? "All other property" was high enough relatively to other like property in other counties. Yet they say, raise it so that the under valuation of horses may be equalized. The result is that "all other property" in a county is raised above the relative standard of other counties, and horses are necessarily left below the standard of valuation of horses in other counties. This is so palpably unjust that it ought to obtain no countenance. We admit there are some just such absurdities in the practice in some of the states. One state, at least, has by statute adopted the rule that if the aggregate of property in a county is below what the state board deems right, the board equalizes by increasing the rate of taxation for state purposes in that county. It is true that the legislature might have limited the board to raising or diminishing aggregate valuations of counties, and the objection to its manifest unfairness might be answered by saying that any system of taxation must in practice result in some inequalities. But it seems to us evident that our legislature intended to take the advanced step of classifying property and applying the raise or diminution to classes rather than to the aggregate, and thereby minimize the danger of inequality

as much as possible; and for this reason the board was authorized to increase the number of classifications. Just as the number of classes is increased just so much more is it possible to justly equalize valuations, and is injustice diminished.

If it is true that the Territorial Board could only raise the aggregate value of all property in a given county, then, of course, in the attempt to tax the mines at anywhere near their actual value it would be necessary to raise the valuation on cattle, sheep, cultivated lands, town and city lots, and all other property, which may already have been valued high enough.

If it should be found for instance, that the patented mines of Yavapai county were not valued within $1,000,000 of their value, based not upon their actual but upon the relative value to other property in that county—suppose we say that this was true, then the rule contended for by the respondents is that this $1,000,000 shall be added not to the valuation of the mines, but to all the property in the county.

And if in Yavapai, and in Cochise, Gila, Graham and Mohave, Pima and Santa Cruz and Yuma, it were found that mines were valued at $10,000,000 less than their value, the valuation in those counties for the purpose of equalization must be raised $10,000,000; and the rule contended for by respondents would require that the valuations of property in Maricopa, Pinal, Coconino, Apache and Navajo must be reduced $10,000,000 in order to preserve the aggregate as returned by the local boards. Or possibly the mines should escape their fair proportion of the burdens, as the appellant seems to think.

There has been some suggestion that the raise ordered by the board, being horizontal, places the value of unpro-

ductive mines too high. The record in this case negatives that claim. When town and city lots are returned at a total valuation, it can not be assumed that every town and city lot in that county is equal value, or has been so valued by the assessor, and so passed the local board of equalization. It is contrary to our common knowledge to assume that every acre of the number of acres returned at a total valuation in any county, is in fact of equal value with every other or, that it was so assessed. And so with the items of other classes of property. It is to be presumed that their relative value was properly equalized amongst the various individual items of a class, and of course a percentage raise or diminution will not affect the relative value of each item of one class to every other item of that class.

If in fact all patented mines in any county have been assessed, without regard to their productiveness or unproductiveness, indeed without regard to their value, and nevertheless the aggregate of them all is grossly undervalued, it is but another instance of the flagrant wrongs perpetrated by the local taxing officers, and just such a wrong against which our statute attempted to provide, and placed it within the power of the board to protect the interest of all other taxpayers by raising to its just relation the valuation of mines.

In Territory v. First Nat. Bank of Albuquerque, 65 Pac. 173, (Supreme Court of New Mexico. August 3, 1900), the Court says :

"The board at the same time took the following action, as appears from the stipulation : 'In the matter of the assessment of the First National Bank of Albuquerque, New Mexico ; the Sierra County Bank : (and twelve other banks), it appearing to the board from the assessment rolls

furnished to it by the auditor that the scale of valuation of shares in the capital stock and surplus of banks in said counties has not been made with reasonable uniformity by the different county assessors of said counties: Now, therefore, the said board, in order to adjust and equalize the said assessment rolls in said counties on shares of capital stock and surplus of banks, hereby raises the said assessment on said shares of the capital stock of said banks to the uniform amount of sixty per centum of the par value of said shares of the capital stock and surplus of each of said banks, so that the same will be of uniform value throughout the territory.'

"The return made by the bank fixed the valuation of the capital stock at $75,000, but it appears from the declaration, the additional assessment, and the papers in the case that the capital stock of this bank was really $150,000, and that adding the $15,000 of capital stock required by the territorial board to be added to the amount stated in the return, of $75,000, the amount fixed by the board upon which the bank should be taxed was $90,000, or 60 per centum of the par value of the capital stock of the bank. The power of the board to take this action is called in question, and the provisions of the statute conferring its powers must determine this question. For the purpose of this case, it is only necessary to examine section 2636, Comp. Laws 1897, as this is undoubtedly the section conferring the power exercised by the board, if such power exists. Section 2635 is referred to by counsel for the plaintiff, but that section refers to the original jurisdiction of the board to assess railroad, telegraph, telephone, and sleeping-car companies and is not in point in this case, as the making of an original assessment was not attempted. Section 2636 requires said board to meet annually on the second Monday of September as a board of equalization and appeal only. Their duty as a board of equalization is prescribed therein as follows: 'It shall be the duty of the auditor of the territory at such meeting to furnish said board with the assessment roll of each county of the

territory for their inspection and examination for the purpose of ascertaining the rate of assessment and valuation of property therein, and whenever they are satisfied that the scale of valuation has not been made with reasonable uniformity by the different county assessors the said board shall adjust and equalize the said assessment rolls by raising or lowering the valuation thereof so that the same shall be of uniform value throughout the territory. * * *'

"It is well to keep in mind at the outset that the county board of equalization and the territorial board of equalization have entirely different jurisdictions. One acts, necessarily, within the county which the board represents. The other is given extended jurisdiction embracing the the entire territory. The territorial board may consider and decide cases of appeal under the jurisdiction conferred upon it, but in addition to this the territorial board is given original and enlarged jurisdiction to determine such questions as affect assessments of property in the different counties, and also with regard to the effect of those assessments throughout the territory to secure uniformity. We see no reason why the territorial board should not exercise the power, if conferred by the statute, regardless of whether an appeal was taken from the action of the county board or not.

"The County Board of Equalization acts with a view of uniformity within the county, without any regard to the assessments, even of the same kind of property in other counties of the Territory; and the want of uniformity in the assessment of the different classes of property returned by county assessors can never be known until the assessment rolls of the different counties are compared by the Territorial Board of Equalization. If, because no appeal is taken from the action of the County Board of Equalization, the Territorial Board of Equalization is powerless to either increase or decrease valuations made by the assessor, approved by the County Board of Equalization, *then the Territorial Board of Equalization would be powerless to secure the reasonable uniformity required by the statute.*

"This section of the statute, in our opinion, confers jurisdiction upon this Territorial board to so adjust and equalize the assessment rolls by raising or lowering the valuation of certain classes of property as may be necessary to secure uniformity throughout the Territory. Counsel for the appellant attaches much importance to the words 'assessment rolls,' used in this section of the statute, and contends that all the Territorial board has power to do is to increase or diminish the total assessment of the respective counties; that is to say, if the scale of the valuation is lower in one county than in others, as shown by the total assessment of that county, the board must increase or diminish the entire assessment of the county, and has no power to alter the valuation of any particular class of property borne upon the assessment roll of one county so as to make it uniform with the scale of valuation fixed by the assessor of another county upon the same class of property. This construction of the language of the statute is, in our opinion, erroneous. To follow the rule contended for by appellant's counsel would do a great injustice. For instance, the assessment roll contains property such as real estate, animals, numerous kinds of personal property, and also the capital stock of banks, in counties where there are banks. To contend that the assessment of the entire county must be increased or diminished, in order to equalize it with the assessment of other counties in the Territory, would require the raising of the valuation and increase the taxation upon all classes of property enumerated in the assessment roll of the county. Take, for instance, the item of real estate. The difference of the value of real estate in the different counties is very great; and as to it the local board and assessor are better able to place a proper value upon it than the Territorial board, because its value depends largely upon local conditions. It would seem unreasonable, and therefore not within the legislative intent, to say that all the owners of real estate in the county should be compelled to submit to an increase in the valuation fixed upon

their real estate, because bank stock or other property was assessed below its proper value. Much more just and reasonable is a construction which would authorize the board to take, for instance, the capital stock of banks, the valuation of which is approximately the same throughout the Territory, and adjust and equalize the valuation of this particular class of property so as to secure uniformity in its valuation throughout the Territory; and so as to the valuation of other classes of property. Indeed, the language of the section referred to specifically confers power upon this board to raise and lower the valuation of property found upon the assessment rolls so as to secure uniformity in the scale of valuation throughout the Territory, and it seems to necessarily follow from this language that the board is required to compare the scale of valuation throughout the Territory, and that this raising or lowering does not refer to the raising and lowering of the entire tax roll of the county, because to increase the valuation of the entire tax roll of all the taxable property assessed in the county would, in many instances, do great injustice to those parties whose property was listed at its full value.

"It is true that in equalizing the assessments of this particular class of property in the different counties of the territory, by increasing or lowering the scale of value placed upon such property by the different assessors, *they necessarily changed the value and the assessment* of the property of the defendant; but this was only indirectly, and was a necessity to accomplish the purpose for which the board was established.

"The board certified that the scale of valuation upon bank stock in the different counties was not uniform, and they fixed a uniform scale of valuation for the stock of all banks in the Territory. By this means the result of the equalization of this class of property would fall upon the owners of such property, and this is just as it should be. It necessarily affects individual assessments, and there could be no more equalization of the assessments of property that would not, in that sense, operate to change

individual assessments; but this effect is unavoidable and, as individuals affected by an equalization of values have no just ground of complaint if the board has such power conferred upon it in the interest of the entire territory, individual interest must yield to the public good, as it has been found necessary to establish some method of adjusting and equalizing the assessment of property in many, if not all, of the states and territories.

"We are of the opinion that the board acted clearly within the scope of its authority in thus equalizing the scale of valuation upon bank stock, and they had a perfect right to alter the scale of valuation placed upon such stock by the assessor and the board of equalization of Bernalillo county, regardless of the question of appeal."

See also State v. Nichols. (Wash.) 69 Pac. 775.
Salt Lake City v. Armstrong. 49 Pac. (Utah) 641.

But while the reasoning of these decisions is unanswerable, and of controlling force, the strongest evidence of the legislative purpose to authorize the action taken by the board is to be found in its own utterances and conduct. First it expressly declares that the board may increase or diminish the *valuation* (not the aggregate valuation) of property *in* any county (not *of* any county) as much as in its judgment may be necessary to produce a just relation between all the valuations of property in the territory. What *kind* of property? What *class* of property? What *quantity* of property? Manifestly, any kind, any class, that has been returned to it, and in such quantity as may be comprised in any class or classes it finds it necessary to raise or lower in order to bring all valuations into a just relation with one another. The language itself is so plain as to scarcely need construction. But to concede, for the purpose of argument only,

that the meaning without external aids, might fairly be considered doubtful, let us apply some of the recognized rules of statutory construction. That it may increase or diminish values must be admitted without argument. Under the rules of construction can the statute be given a meaning that precludes it from raising or lowering by classes of property?

Reverting to the clause empowering the board to increase or diminish the valuation of property *in* any county, etc., the Supreme Court of California, in Wells, Fargo & Co. v. Board of Equalization, 56 Cal. 196, held that the words "to equalize the valuation of the taxable property *in* the county" [the italics are theirs] of themselves conferred upon county boards the power to compare the individual assessments upon the assessment roll, one with another, and make them equal. That the words "to equalize the valuation of the taxable property *of* the several counties," of themselves, conferred upon the state board the power to compare the assessment roll of each county with the roll of each and all the others, and make them conform to their true value. In other words, had the state board been empowered to "equalize the valuation of the taxable property *in* the county," as our territorial board has been, it seems that the court would have held that it had the power to equalize *individual* assessments. We do not claim that our legislature conferred upon the board this degree of power, even though the language used may fairly import it. We only contend that it may equalize by classes, because the county board is given the power, and probably the exclusive power, to equalize individual assessments. The board, in short, is granted the power to equalize all kinds or classes of property, *ad libitum*, subject only to the

limitation that individual assessments may be equalized by the local boards. Thus a judicial construction has been given to these important phrases.

The legislature has recognized in express and unequivocal language that the board has the power to change the valuation of classes of property.

Paragraph 3874, Stat. 1901, provides that, "No assessor, board of supervisors, or the Territorial Board of Equalization shall assess any real estate at a less valuation than seventy-five cents per acre, nor shall any board of equalization reduce the valuation of any real estate below seventy-five cents per acre."

It may be urged that the enactment is ineffective in so far as it assumes power to control the judgment of assessing officers as to the valuation of property. But it is, nevertheless, valid as an expression of the legislature recognizing that the board had been given and would exercise the power to assess and *change* the valuation of real estate (undeniably a class of property) and that it ratified and approved the practical construction that had theretofore been given the statute by the officials charged with its execution. Much strength is added to this argument when it is remembered that Paragraph 3874 was not enacted until 1901, although the Board had been equalizing classes of property since 1887. It must be conclusively presumed, then, that Par. 3874 was enacted with legislative knowledge and approval of the construction theretofore given the former statute by the executive officers, and expressly recognized and approved it.

"In cases of doubt and uncertainty the declaration of

the legislature, or practical construction by the executive department, gives a certain sanction and will be influential with the courts.

"Where the lawmaker declares its own intention in the enactment of a particular law or defines the sense of the words it employs in a statute, it not only exercises its legislative power but exercises it with a plausible aim, for it professes to furnish aid to a correct understanding of its intention. The legislature in passing an act may declare its meaning and construction, and such declaration will be binding upon the courts."

Sutherland Stat. Cons. Par. 358, and many cases cited.

Intention of the legislature, when discovered, must prevail in the construction of statutes.

Brown vs. Barry, 3 Dall. 367.

Lawmaker's intent is law:

Jones vs. Guaranty Co., 101 U. S. 625.

Beley vs. Naphtaly, 169 U. S. 360.

"A provision which is special, by pointing to a particular act and declaring for what definite purpose it was enacted, or defining certain words or phrases, has the fullest effect. It is a part of the law, and must be construed and applied accordingly, and the act will have a construction, and the words and phrases a meaning, in harmony with the defining provisions, even though otherwise they would have a different effect."

Sutherland Stat. Cons. Par. 360, and ten cases cited in note 71.

The words and meaning of one part of a statute may lead to and furnish an explanation of the sense of another.

Id. Par. 368, note 55.

The legislature, in re-enacting the language of the Act of 1887 in the revision of 1901, recognized and adopted the practical construction by successive Boards of Equalization.

The avowed legislative purpose in providing for the code commission whose labors resulted in our present code, was to "revise the laws of the Territory of Arizona and to eliminate therefrom all crude, contradictory and imperfect matter, and also to insert such new provisions as they may deem necessary and proper." In other words, to correct errors and to eliminate unsatisfactory laws. The Code Commission was composed of eminent lawyers, including John C. Herndon, of Prescott; L. H. Chalmers, of Phoenix; and Judge C. W. Wright, of Tucson. The death of Judge Wright caused a vacancy on the commission which was filled by the appointment of a member of the present Supreme Court of the Territory—Hon. Richard E. Sloan. Hon. Frederick S. Nave, now also a member of that Court, was clerk of the commission throughout its term. These men, all distinguished for their ability and learning, included the statute in question here, as a part of the new code, and it was consequently re-enacted. The reflection cannot be indulged that any of the commissioners, or the clerk, were ignorant of the construction that had been given the statute for many years by the executive officers, therefore it must be presumed that the commission approved it, as wise and beneficent, and recommended its continuance under the same practical construction that it had been receiving. It must also be presumed that the legislature knew of the construction, it having been continued for so long a time, and relating to a matter of such

great and general importance, and by its re-enactment approved it. A re-enactment under these circumstances makes the former construction a part of the law itself, and renders it binding upon the court.

"In the interpretation of re-enacted statutes the courts will follow the construction they received when previously in force. The legislature will be presumed to know the *effect* which such statutes originally had, and by re-enactment to intend that they should have the same effect.

In re Guggenheim Smelting Co., 121 Fed. 153.

Sessions v. Romadka, 145 U. S. 29.

Fiske v. Henarie, 142 U. S. 459.

And many other cases cited in Sutherland Stat. Cons. Par. 403, N. 98.

"This rule has been held to apply to the re-enactment of a statute which has received a practical construction on the part of those who are called upon to execute it."

Sutherland Stat. Cons. Par. 403.

Bloxham v. Consumers, Lt. Co. 36 Fla. 519.

Commonwealth v. Grand Central, 97 Ky. 325.

State v. Moore, 50 Neb. 88.

Price v. Lancaster Co., 189 Pa. St. 95.

"In order that re-enactment should have this effect, the practical construction must be an allowable one, and doubtless would have to be in a matter so important or be so long continued that the legislature would presumably have knowledge of it."

Sutherland Stat. Cons. Par. 403.

"The legislature is presumed to be cognizant of such construction and after long continuance, without any legislation evincing its dissent, courts will consider themselves warranted in adopting that construction."

Sutherland Stat. Cons. Par. 474, N. 77.

"And where the statute is re-enacted without change, the presumption is strong that the legislature intended it to bear the same construction that had previously been given it."

Id. 474, N. 78.

Since 1887 the legislature has frequently changed the laws relating to taxation. In fact, portions of it have suffered many changes, and very little, if any, of the revenue law as it then stood has escaped amendment or elimination. These changes were not accidental—they were deliberate. It seems fair to assume that the legislature must have been dissatisfied with the operation and effect of these laws (it must be presumed to have known *how* they operated and what effect they had) else it would not have changed them. But it is highly significant that the law in controversy, in so far as it relates to the power of the board, has never been changed since its first enactment by our legislature. How it has operated, what effect it has had, what powers have been exercised under it, have been matters of common knowledge for many years. The legislature knew of all this. It has manifested its satisfaction with and approval of it all (1) by steadfastly declining to modify or repeal it, although often amending other parts of the same act; (2) by re-enacting it word for word after its practical operation for years; (3) by the sanction given in the language used in the enactment of Paragraph 3874 in 1901.

Finally the practical construction given the statute by successive Boards of Equalization is of itself controlling.

If, however, none of these evidences of the legislative purpose existed, we insist that still, under the weight to be given to the long-continued practical construction of this statute by the executive officers, such construction is controlling in this case. We contend that where the construction has been continuous and unbroken for eighteen years; where such construction has been acquiesced in by all officers charged with any duty respecting the execution of the statute; where it has been advised or acquiesced in by every Attorney General of Arizona since 1887; where the taxpayers of the entire Territory have paid taxes year after year upon valuations of property as increased or decreased by classes; where the courts have tacitly sanctioned it and the best lawyers in the Territory have, as members of the Code Commission, recommended its continuance; where the matters involved in and affected by such construction are of vital importance to the people of the Territory, and where it plainly comports with the evident meaning of the statute, it has become a part of the law itself. It cannot be challenged. It cannot be overthrown. It is absolutely binding upon the courts.

The reports of this court present an unbroken and unvarying line of decisions to this effect:

Stuart v. Ladd, 1 Cr. 299, is a leading case upon this question, the contention in that case being whether the Supreme Court judges had jurisdiction while sitting as circuit judges without special commissions, such having

been the practice. The court held that by reason of acquiescence therein, for fourteen years, such construction would not be overturned, saying :

" Another reason for reversal is, that the Judges of the Supreme Court have no right to sit as circuit judges, not being appointed as such, or, in other words, that they ought to have distinct commissions for that purpose. To this objection, which is of recent date, it is sufficient to observe, that practice and acquiescence under it for a period of years, commencing with the organization of the judicial system, affords an irresistible answer and has indeed fixed the construction. It is a contemporary interpretation of the most favorable nature. This practical exposition is too strong and obstinate to be shaken or controlled."

" Contemporaneous construction, after the lapse of time, without change of that construction by legislative or judicial decision, has been declared to be generally the best construction. It gives the sense of the community to the terms made use of by the legislature. * * * The strongest evidence that it has been rightly explained in practice. A construction under such circumstances becomes estalished law."

Hahn v. U. S., 107 U. S. 402.
Opinion of Justices, 126 Mass. 551.
Cohen v. Va., 5 Wheat. 264.

At page 659 of the 21st Sup. Ct. Rep. the Court after having collected and grouped the authorities says :

" From this resume of our decisions it clearly appears that practical construction is relied upon only in cases of doubt. Where there was obviously a matter of doubt we have yielded assent to the construction, placed by those having actual charge of the execution of the statute."

Fairbanks v. U. S. 181 U. S. 311.

The twenty-fifth section of the patent act of 1870, having been immediately construed by the Commissioner of Patents according to the ordinary and natural meaning of the words, and having been substantially reproduced in section 4887 of the Revised Statutes and never amended, this court held that it would not, after a lapse of twenty-five years, adopt a different construction. The court on page 518, Vol. 15, Sup. Ct. Rep. says:

"The Revised Statutes of 1874 were adopted, it must be presumed, with the knowledge on the part of Congress of the construction previously placed by the patent office upon the twenty-fifth section of the Act of 1870. This presumption is strengthened by an examination of the act approved February 18, 1875, entitled, 'An Act to correct errors and to supply omissions in the Revised Statutes of the United States' (etc). * * That Act upon its face shows that the entire revision of 1874, after it took effect, was carefully re-examined for the purpose of ascertaining whether there were errors or omissions in the work of revision."

Bate Refrigerating Co. v. Sulzberger, 157 U. S. 1.

"A contemporaneous construction by the officer upon whom was imposed the duty of executing those statutes is entitled to great weight; and since it is not clear that that construction was erroneous it ought not now to be overturned."

U. S. v. Philbrick, 11 U. S., 7 Sup. Ct. Rep. at page 417.

Practical construction of a statute acquiesced in for a long time controls.

McKeen v. Delaney, 5 Cr. 92.

U. S. v. Bank of North Carolina, 6 Pet. 39.

Surgett v. Lapice, 8 Howe, 68.

Union Insurance Company v. Hoge, 21 How. 66.

And is of greater weight where participated in by Attorney General.

Havemeyer v. Iowa Company, 3 Wall. 302.

Also see Blake v. National Bank, 23 Wall. 321.

When act is doubtful its practical construction by a department is entitled to great weight, but otherwise when clear:

U. S. v. Alger, 152 U. S. 397,

Bate Refrigerating Company v. Sulzberger, 157 U. S. 34.

Hewitt v. Schulz, 180 U. S. 156.

Where there is merely doubt as to the soundness of contemporary practical construction of statute by executive department it should not be overruled except for cogent reasons.

U. S. v. Finnell, 185 U. S. 252.

In case of ambiguity, contemporaneous construction not only of courts but of departments and executive officials is *controlling*.

Schell v. Fauche, 138 U. S. 572.

See *especially* on this point.

Sutherland Stat. Cons. Par. 478.

Houston and Texas Cent. Railway v. State, 62 S. W. 114.

This case construes a land grant in accordance with the practical construction.

Held that Congress evidently did not, in re-enactment of 1888, intend to overthrow the construction theretofore placed on the statute by the Public Printer.

U. S. v. Barringer, 188 U. S. 583.

Practical construction prevails over the mere letter of the law.

Potter v. Hall, 189 U. S. 300.

"We think the contemporaneous construction thus given by the executive department of the government, and continued for nine years through six different administrations of that department—a construction which though inconsistent with the literalism of that act, certainly consorts with the equities of the case—should be considered as decisive in this suit."

U. S. v. Alabama, 142, U. S. 615.

Construction followed—"But where there has been a long acquiescence in a regulation and by it rights of parties for many years have been determined and adjusted, it is not to be disregarded without the most cogent and persuasive reasons."

Robertson v. Downing, 127 U. S. 607.

"The principle that a contemporaneous construction of a statute by the executive officers of the Government whose duty it is to execute it is entitled to great respect, and should ordinarily control the construction of the statute by the courts, is so firmly imbedded in our jurisprudence that no authorities need be cited to support."

Pennoyer et al. v. McConaughy, 140 U. S. 1.

"A contemporaneous (construction) is generally the best construction of a statute. It gives the consent of a community to the terms made use of by a legislature. If there is ambiguity in the language, the understanding and application of it when the statute first comes into operation, sanctioned by long acquiescence on the part of the legislature and judicial tribunals, is the strongest evidence that it has been rightly explained in practice."

Packard v. Richardson, 17 Mass. 143, 9 Am. Dec. 123.

In Bloxham, etc., v. Consumers Electric Light & St. R. R. Co. reported in 36 Fla. 519, 51 A. St. Rep. 44, a case wherein the R. R. Co. tested the right of an auditor to assess its property, the court says:

"The taxes for many years have been paid under such assessments without objection; thousands of dollars have been so collected, and no attack whatever has been made upon the validity of such assessment. This long prevailing custom is a matter of which the court can take judicial notice. Westbrook v. Miller, 56 Mich. 148. It is notorious that acts for the general collection of revenue are generally formulated by or under the advice of the comptroller of the state. Since this method of assessing taxes upon street railroads has been in force, the legislature has several times, repealing former acts, re-enacted the same provisions, thus giving legislative sanction to the practical construction of the act by the department of the state government which has charge of the assessment and collection of taxes from railroads. * * *

"The question involved is the method of taxation of the property in dispute. No question is raised of the liability of the property to taxation. No showing is made of any double assessment, or unequal, unjust or oppressive taxation. The taxes on the property for the year for which the assessment was made have not been paid. The property has not discharged the burden of taxation which rests upon it as upon all other property in the State not specially exempted by law. In such a case we think the greatest deference and respect should be paid by this court to the long-prevailing construction of the statute made by the executive department of the State government, and we will not interfere with the same. We do not rest our conclusion upon the case of Westbrook v. Miller, supra, but have examined many other authorities upon the subject, which practically unanimously agree with that case.

"In the case cited from 41 Ga. the Court said, adopting the practical construction of a stautute made by the

executive department of the government, that if the matter was before them as an original, independent proposition, they would be inclined to hold diffenently, but yield their own views to such practical construction."

See also State v. Grey, (Nev.) 32 Pac. 192.
Kelly v. Multnomah County, 22 Pac. 1110.

In Auditor etc. v. Cain, 61 Southwestern 1016-17 the Court says:

"We gave the same effect to long-continued contemporaneous interpretation or construction of a statute by the co-ordinate branches of government in Pennington v. Woolfolk, 79 Ky. 13, and such, indeed, is the great preponderance of authority of the other states and of the text writers on the subject."

(In that case such a construction was followed).

The rule has been applied in New York even in the construction of a penal statute. In People v. Adelphi Club, 31 L. R. A. at page 514 the Court says:

"In this connection the construction placed upon a statute penal in character, by public officers charged with the duty of executing its provisions for many years may properly be considered in determining the legislative intention. [Cites authorities]. Upon this subject the evidence shows that clubs in this state have existed for a long period, that they have not been required to take out a license, and yet it is a well known fact that they have kept on hand stocks of liquors which they distributed to their members. Was it then intended that the distribution of liquors by a club among its members should be a sale within the contemplation of the statute? If so commissioners of excise, police officers and district attorneys have for many years neglected their official duties."

In re Warfield, 22 California, on Page 71, the court affirms certain probate practices, although contrary to the letter of the statute, by reason of acquiescence therein from the year 1850 to the year 1855.

"We cannot shake a principle which has so long and extensively prevailed. If the practice originated in error, yet the error is now so common that it must have the force of law. The legal ground on which this provision (practice) rests is that long continued usage furnishes a contemporaneous construction which must prevail over the mere technical import of words."

Rogers v. Goodwin 2, Mass. 475.

"The rule adopted by the assessors in this state *has grown into a custom* and has been tacitly sanctioned by every department of the government for a long course of years, and *it is now too late to challenge it.* Even so late as the last special session of the legislature, that body, by clear implication, acknowledged the custom and yielded to its influence."

Board of Supervisors of Bureau Co. v. Chicago etc. R. R. Co., 44 Ill. p. 239.

The court will take judicial notice of such a custom.

Bloxham v. Consumers' Electric R. R. Co. 36 Fla. 519, 51 Am. St. Rep. 44.

The court will also take notice of another custom involved in this case, to wit: The custom of assessors to assess property for taxation at less than its actual value.

R. R. & Tel. Co. v. Board of Equalization. 85 Fed. 302.

Board of Supervisors of Bureau Co. v. Chicago, etc., R, R. Co., 44 Ill. at page 239.

Guenther's Case, 19 Fed. 399.
Cummings v. Bank, 101 U. S. 153, at page 162.

The supreme court of Arizona had very strongly intimated its approval of all that is contended for by the territory in this case. In the Copper Queen Case (71 Pac. 907) *supra*, the court says:

"To hold that the court, in redressing a wrongful overvaluation of property, should conform to the valuation which the taxing officers have made upon other similar property, and not to *the statutory requirement that all property should be assessed at its full cash value*, would result in an additional wrong being done to the owners of property which may not fall within the *class* in which the discrimination is made. Hence to say that, because it may be the custom, or may be the *deliberate plan and system of the taxing officers of Cochise county*, or in the territory, to tax patented mining claims at $5 per acre regardless of their cash value, the patented mines of plaintiff should be so assessed, would be to disregard the rights of the owners of other *species* of property to have the burdens of taxation uniformly and equally distributed *upon the basis of the cash value of all property subject to taxation.*"

We may then summarize as follows: The construction given the statute by the Territorial Board of Equalization finds its warrant and sanction:

1. In the language and manifest purport of the statute itself.

2. In contemporaneous construction running for eighteen years and acquiesced in by all concerned.

3. In the legislative construction afforded by the reenactment of the statute in 1901 with full knowledge of the construction it had received at the hands of the executive officers since 1887.

4. In the legislative sanction of the power to effect the assessment of classes of property apparent in the enactment of Paragraph 3874, 1901.

5. In the judicial decisions cited herein.

6. In its obvious logic, justice and equity,

Paragraphs 3879-80 were not adopted from Colorado.

It is erroneously asserted by appellant, however, that paragraphs 3879-80 "were enacted and adopted from the Colorado statute after an interpretation thereof by the Court of last resort of that State." The case of People v. Lothrop, 3 Colo. 428, is cited and relied on in support of this contention.

In Texas & Pac. Ry. Co. v. Humble, 181, U. S. 57, this court (at page 65) seems to recognize the principle that there must be some evidence of adoption aside from mere similarity of language. The intent of the legislature is the thing to be ascertained and certainly there should be some evidence of intent to adopt language carrying with it a meaning given by judicial construction. Here the Supreme Court of the Territory, which must be regarded as being fully advised as to the history of the legislation, has held that the paragraphs of the statute in question were not adopted from Colorado, and such authoritative declaration as to a matter of local legislative history, we submit, should be accepted by this honorable court in the absence of any evidence of adoption.

But a mere reading of the Colorado statute in force at the time the Lothrop case was decided disposes of the notion that our legislature adopted either its substance or the interpretation placed upon it theretofore. Ours is so essentially different from that of Colorado, as to clearly

denote a different intent. The difference is shown in the following comparison:

Colorado Statutes 1877.

2282. (Sec. 43). Said board shall ascertain whether the valuation of *real estate* in each county bears a fair relation or proportion to the valuation in all other counties of the State, and on such examination they may increase or diminish the aggregate valuation of *real estate* in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of real estate in the State; but in no instance shall they reduce the aggregate valuation of *all the counties* below the aggregate valuation as returned by the clerks of the several counties.

Revised Statutes Arizona 1887–1901.

3880. (Sec. 50). The said board shall ascertain whether the valuation of *property* in each county bears a fair relation or proportion to the valuation in all other counties in the Territory, and on such examination they may increase or diminish the valuation of *property* in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of *property* in the Territory; but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as returned by the Boards of Supervisors of the several counties. And said board shall at the same time fix the rate of taxes for Territorial purposes which is to be levied and collected in each county.

Our legislature may have used the *form* but it studiously omitted the words limiting the board's jurisdiction to action upon the "*aggregate* valuation of real estate," and with equal deliberation extended its power to action upon the valuation of property, not the property *of* any county, but the property *in* any county. Obviously, also, to any *class* of property established by statute or by the board pursuant to the statute. See paragraph 3877. Had our legislature intended to adopt the Colorado statute it would have done so. It saw fit to do otherwise. It employed different phraseology with widely different meaning. Suppose that in 1887 our legislature had

adopted *verbatim* the Colorado statute then in force, and that in 1901 it had enacted our present statute for the first time. Would any court entertain the proposition that no effect should be given the amendment, or that the language last employed was susceptible of the same construction given the former? The matter is too plain to deserve argument.

"A deliberate or material change of expression must be taken *prima facie* to import a change of intention."

23 Am. & Eng. Ency. Law (Old Ed.) 373 and cases cited in Note 2.

"The natural presumption is that the phraseology of the statute was changed in order to change its meaning. The very fact that the prior act is amended demonstrates the intent to change the pre-existing law, and the presumption must be that it was intended to change the statute in all the particulars touching which we find a materia change in the language of the act."

U. S. v. Bashaw, 50 Fed. 749, at page 754.

"If the legislature use words which have received a judicial interpretation, they are presumed to be used in the same sense unless the contrary intent can be gathered from the statute. But where the same language is not preserved, but is substantially varied, it shows a different intention."

Lewis Sutherland Stat. Con., par. 399.
Rutland v. Mendon, 1 Pick. 154.
Wills v. Russell, 100 U. S. 621.
Pingree v. Snell, 42 Maine 53.

It is only where the statute is adopted *without* change that the former construction is ever followed.

Goldman v. Sotelo, 68 Pac. 558.
Gardner v. Henrietta, 173 U. S. 123.

Construction in Lothrop Case would not be binding upon this Court even if our statute had been adopted verbatim from that state.

Even if the sections referred to had been taken *verbatim* from the Colorado law, the interpretation placed upon them in Colorado would not be binding in Arizona for the following reasons:

1. The rule that construction should follow the courts in the state from which the statute is adopted is not an absolute one. The proper construction is always the one required by the obvious meaning of the statute.

Coulam v. Doull, 133 U. S. 216.
Whitney v. Fox, 166, U. S. 647.

2. The construction placed upon the Colorado statute in the Lothrop case was based upon the ground that the constitution of that State lodged the power of fixing valuations solely in the Assessor. The Court says, on page 466: "Looking then to the provisions of the *constitution* and the statute, we are clearly of the opinion that the power to fix and determine the valuation of taxable property is lodged by them in the Assessor and the Board of County Commissioners of the several counties of the State," etc.

And on page 463, the Assessor is referred to as a *constitutional* officer. And the Court in the same paragraph doubts whether it is competent for the Legislature to take from the County Assessors the substantial control of valuations of property for State taxation and vest it in a central authority.

No such question arises here. Arizona has no constitution and it may vest the power of fixing, reviewing and correcting valuations in such agencies as it may deem expedient.

Therefore, the *conditions* were not the same in Arizona in 1887 as they were in Colorado. Had Colorado lacked a constitution when the Lothrop case was decided, can it be assumed that the decision would have been the same? We think it may fairly be doubted, in view of the stress laid by the Court upon the constitutional provisions in that case. It was, then, the construction *of a constitutional*, rather than a *statuory* provision, and it is certain that the cases cited by counsel, as having relied upon and following the Lothrop case, do so *solely* upon the ground that the Lothrop case afforded a construction of constitutional provisions not different from their own, and from which their own were adopted. This is conspicuous in the Montana cases cited and strongly relied upon by counsel. (State vs. Fortune, 60 Pac. 1086, and State ex rel Wallace vs. Equalization Board, 46 Pac. 266). As the opinion in the Fortune case shows that both cases turned upon constitutional provisions *only*, we take the liberty of quoting freely from it (the italics being ours):

"The learned Attorney General frankly states that the present proceeding practically amounts to a motion for a rehearing of the case of State ex rel. Wallace vs. State Board of Equalization, which was decided on September 28, 1896, and is reported in 18 Montana, at page 473, 46 Pac. 266. The question submitted in that case was whether the State Board of Equalization possesses the power to increase the total of the assessed valuations of the counties of the State. That question is now again presented, together with the question of whether such board has the power to increase or decrease the valuation of any specific *class or classes* of property above or below that fixed by the county boards as shown by the abstracts and statements transmitted to the State board. In the Wallace case this Court held that the State Board of Equalization has not authority to increase or decrease the total valua-

tion of the property in the State as shown by the abstracts transmitted to it by the county boards. The Attorney General earnestly and with ability argues that the former decision is erroneous. He insists that in the Wallace case the *constitutional provisions only* were considered, the statutory provisions touching the Board of Equalization not having been called to the Court's attention. It is apparent, however, that the decision was based upon the *limitations ordained by Sections 9 and 15 of article 12 of the constitution of Montana* in respect of powers of the Board of Equalization. * * * * * * *

The opinion sets out also Section 11 of Article 10 of the *Colorado Constitution, which, as to the subject then and now under consideration, differs not at all from Section 9 of Article 12 of our constitution.* The Court quoted liberally from the Supreme Court of Colorado in People vs. Lothrop, 3 Colo. 428, which interpreted said sections of the *constitution* of that state, and adopted the reasoning and the decision therein announced, saying: 'These comments by the Colorado court upon the *constitutional restrictions* placed upon the powers of the State Board of Equalization of that State apply with exactness and force to our constitution and the powers of the respondent board thereunder. * * * The Colorado decision was made in 1877, and Montana became a state in 1889. *Section 15 of Article 12 of our constitution was adopted from the Colorado constitution* after an interpretation thereof by the court of last resort in the parent state. *That interpretation is not clearly erroneous.* The presumption is, therefore, that the convention which framed the Montana constitution was 'conversant with and designed to adopt also' the interpretation previously given to the section in Colorado." * * * The learned Attorney General cites sections 3690, 3800-3808, of the Political Code as conferring upon the State Board of Equalization authority to do that which it attempted to accomplish; *but statutes cannot clothe the State board with power denied to it by the fundamental law.* After a careful examination and

consideration of the reasons advanced and the authorities cited, we are of the opinion that the conclusion announced in the Wallace case should not be disturbed or overruled. *Since it was decided two general elections and two sessions of the Legislative Assembly have been held, thereby affording opportunity for the people, if dissatisfied with the interpretation, to change the constitution so as to cure the evils of which complaint is made;* but no such amendment has been proposed. The demurrer is sustained, and a judgment will be entered dismissing the proceeding. Dismissed."

"BRANTLEY, C. J, *I concur in the foregoing opinion solely on the ground of stare decisis. If the question involved were a new one in this state, I would be in favor of disregarding the construction given to the section of the constitution by the Supreme Court of Colorado in People v. Lothrop, 3 Colo. 428, and followed by this court in State ex rel. Wallace v. State Board of Equalization, 18 Mont. 473, 46 Pac. 266, as demonstrably wrong.*"

It is beyond question that in the absence of constitutional provisions the Montana court would have declined to follow Colorado. The trend of the reasoning is that, taking the Colorado statute as it stood, independently of the constitution, the board might lawfully have exercised the power it claimed. And even though it felt bound by the constitutional interpretation, the Montana court followed Colorado reluctantly. The best it could say for the Lothrop case was that it was "*not clearly erroneous.*" That is to say, the court was doubtful of its soundness. And the learned Chief Justice frankly says that it is "*demonstrably wrong*;" and that he concurs on the sole ground of *stare decisis.*

If, then, the Montana court was dubious of the Lothrop case even under the constitutional restrictions and under a

statute far less flexible than our own, can it be doubted that it would have decided differently if unhampered by a constitution?

We think it thus clearly appears that, even though our statute had been adopted *verbatim* from Colorado, still the Lothrop case would not be binding upon this court. But in view of the striking and wide difference between the two statutes and the fact that we have no constitution, that case is not even persuasive.

It is important to remember at this point that in the Fortune case, supra, the Court called attention to the fact that two sessions of the Legislature had been held since the conclusion of the Court in the Wallace case had been announced, and that the people had thus been afforded opportunity to propose a change in the constitution if dissatisfied with the interpretation, but that no change had been proposed. In Arizona not only had the interpretation placed upon our statute by the Board of Equalization and other executive officers been acquiesced in for eighteen years, but our Legislature in 1901 re-enacted that statute without change, with full knowledge of the intertation theretofore placed upon it, thereby recognizing and adopting such construction and making it a part of the law itself. See authorities cited, supra, also—

Gilbert v. Craddock, 72 Pac. 869, at page 872.
Frost v. Pfeiffer, (Col.) 58 Pac. 150-1.

Other decisions following the Lothrop Case are equally inapplicable.

The case of People v. Ames, 60 Pac. 346, is wholly without application here. It merely decides whether a statute enacted in 1891, conferring power upon the State Board of Equalization in terms to "increase or diminish

the valuation of any or either kind, class or grade of property in any county as much as in their judgment may be necessary," etc., was repealed by one passed in 1899 providing that it should have the power to "increase or decrease the *aggregate* valuation of all taxable property, not to exceed in any year five per cent of such aggregate valuation, and only as an incident to such equalization." The court held that the latter act repealed the former, and that the action of the board in changing the valuation of *classes* of property was, for that reason, and because such action was in conflict with the *constitution* of the state, invalid. It is, of course, plain that under the statute of 1899 the board possessed no such power as it attempted to exercise, that statute confining it to action upon *aggregates* and as the constitution was held likewise to be violated, the Colorado court in this instance may have decided correctly. But what possible application can that case have here?

The case of Hacker v. Howe (Neb.), 101 N. W. 356, is not cited quite fairly by counsel. That case does *not* hold that the State board had no power to raise the aggregate, but only held that it could not do so "merely for the purpose of making such increase." In the paragraph succeeding the one selected and quoted by counsel, the Court holds that where the aggregate is raised as an incident to equalization (as in the case at bar) it is a legitimate exercise of power. We have previously herein considered this case.

The case of Poe v. Howell (N. M.), 67 Pac. 62, ought not to be cited as an authority. It is merely a judgment of a District Court of that Territory, and it assumes, incorrectly, we think, that the facts before the Supreme Court of New Mexico in First National Bank v. Territory,

65 Pac. 173, did not indicate that the aggregate valuation had been increased. A careful reading of the latter case convinces us that the aggregate was raised, and that the Court would have approved it had the point been squarely before it.

The Territorial Board of Equalization is not limited to the specific classification of property contained in Paragraph 3877, supra, but may Specify and Act upon subclasses such as patented mines, work-horses and saddle-horses.

This question has already been considered in our general discussion of the statute in question; but the following replies to questions submitted by the count below, after the hearing, for further argument, deal particularly with this phase of the case.

I.

Is the power and authority to add "patented mines" as a classification, derived solely from paragraph 3877 of the Revised Statutes?

The power to add patented mines, as such, to the assessment roll, is found in the general and oft-repeated authority to assess all property. The power to require patented mines to be returned in the abstracts furnished by the clerks of the boards of supervisors is derived solely from the paragraph mentioned, as it is the only paragraph relating to classification.

II.

Does the provision in said paragraph, "but the Territorial Board of Equalization is authorized to diminish or add to the above list," give authority for adding a sub-classification of real or personal property or both?

Unquestionably, if any effect whatever is to be given to the clause quoted, the Board has power to do both. The instant it is conceded that the legislature meant anything by the language quoted, the conclusion that the Board may do what is so plainly expressed is inevitable. The legislature certainly meant just what it has said. Any other construction would defeat the purpose and operation of the statute. The statute is remedial, and should be so construed as to make it effective.

III.

Has the Territorial Board of Equalization, under paragraph 3877, any power to further subdivide or classify any of the classes or lists therein specified by the legislature, or is such power to add thereto confined to new classes of property not specified therein?

It seems to us that there are two distinct inquiries involved in this question, and we shall so treat it. As to whether "the Territorial Board of Equalization, under paragraph 3877, has the power to further subdivide or classify any of the classes or lists therein specified," we say that the power given the Board to "diminish or add to" the list, authorizes it to entirely disregard the empirical classification given in the statute, and to create an entirely new one. It may "diminish" the list to the vanishing point. All the classifications would have then been merged into the residium designated as "all other property." Under the power to add to the list, and to require such other and different matters to be returned as it may deem advisable, it may make a new classification. The power is a continuing one and is not exhausted by one exercise of it. We answer this question, therefore, in the affirmative.

The second question, "Or is such power to add thereto confined to new classes of property not specified therein," we answer decidedly in the negative.

IV.

Is there a provision in the statute for the assessment of patented mines, as such, and if not, by what means may the increased assessment by the territorial board be given effect by the boards of supervisors?

If there is no provision for the assessment of patented mines, then of course the increased assessment by the territorial board cannot be given effect. Patented mines are property, and all property must be assessed, no matter by what name or designation it may be known. The supreme court of the territory decided, in Waller v. Hughes, 11 Pac. 122, that both patented mines and unpatented mining claims are taxable. They must be classified or named as something. The record shows that the former are assessed as "patented mines." Ordinarily they are not legal subdivisions, and are therefore listed by the owner, under the provisions of paragraph 3849, "by some description sufficient to identify" them. It has been the practice for many years to assess this class of property as "patented mines," as the most convenient and intelligent method of describing them, just as certain lands are designated as "grazing lands," "farming lands," etc. We have such classifications of land in this territory, and they are entirely proper. They serve to distinguish the land and identify it. There is such an obvious distinction between mineral and non-mineral lands, that the designation employed might well be said to be a natural one. The means of acquisition of mineral land is different from any other. Its uses are

different. Its values are more variable. Yet it is just as taxable as any other kind of property, and all of it has a measurable cash value. There is, then, a provision in our statutes for the assessment of "patented mines" as such.

V.

Do paragraphs 3849 and 3861 have a bearing upon the interpretation to be given to paragraph 3877?

We are unable to see wherein they do. The former relates to the manner in which the property-owner shall list his property to the assessor; the latter relates to the manner in which the assessor shall enter such property upon the assessment roll. As to the listing of real estate, he is directed, where it is without the limits of an incorporated town or city, to give the number of acres as nearly as can be conveniently ascertained, and the location and township where situate. The requirement that the number of acres shall be given goes to the quantity, merely, and not to the description or classification of the land. The list required to be made out by the property-owner, under paragraph 3849, does not require the acreage of lands to be returned, but, if it is not a legal subdivision, or is unsurveyed, to designate it by some description sufficiently to identify it. What more thoroughly identifies a patented mine than its name—the name under which title has been acquired to it? And it may be assessed by that name, and properly valued regardless of the acreage. And it may be classified and equalized, just as a farm well known by a certain name may be, whether any mention of acreage is made or not.

The first four questions practically present but the one inquiry as to the power of the Board of Equalization to

make new or additional classifications. Treating it in this sense, let us add the following suggestions:

Paragraph 3877 provides that the clerk of the County Board of Equalization shall make an abstract of the assessment roll; this abstract shall contain:

1. The whole number of acres of land, other than city and town lots, listed in the county, and the valuation thereof;
2. The value of the improvements on such whole number of acres of land;
3. The total valuation of city and town lots;
4. And the the valuation of the improvements thereon;
5. The whole number of miles of railroad within the county, and the value thereof;
6. The whole number of horses, and their total value;
7. The whole number of mules, and their total value;
8. The whole number of asses, and their total value;
9. The whole number of cattle, and their total value;
10. The whole number of sheep and their total value;
11. The whole number of swine and their total value;
12. The whole number of goats and their total value;
13. The gross amount of all other property.

These thirteen items constitute all the statutory classification. An abstract containing those items would be in full compliance with the requirements of the statute, unless there shall have been some modification of this list, ordered by the Territorial Board of Equalization.

And the statute expressly authorizes the board to modify this list. In what way may the board modify the list or change these requirements? The language of the statute is that the board is authorized—

1. To diminish the list; or

2. To add to the list, and

3. To require such other different or further matters to be returned.

The object of classification at all is to enable the board to more nearly approach a just equalization.

The greater number of well defined classes into which property can be divided, it is very obvious, the better the board may be enabled to find and correct inequalities of valuations.

Appreciating this, the legislature, to enable the board to meet exigencies arising out of an absolutely fixed, arbitrary and empirical classification, has authorized the board to change the classification prescribed by it, in at least three ways—

First—By adding to the list.

It might be argued and conceded, under this provision, that any added classes must be such as can be made of the unclassified residium of taxable property which for convenience we have numbered 13, being "The gross amount of all other property." We do not say that it is necessary to concede this, except indeed it be so in order to give effect to the final provision for modification.

Second—By diminishing the list.

This is plain enough. The list is diminished by omitting one or more of the items of classification. The property in any such omitted class or classes would then simply be included in that residium of "all other property." But the authority to modify the list does not stop here. Under these two provisions authorizing modification, diminution of or addition to the list, the board might leave the items prescribed by the statute unchanged, except as any may be omitted.

Third—The statute proceeds, and provides that the board may require such different or further matters to be returned.

Recalling that the matters are those abstracted from, and originally appearing in the assessment roll; that it is the abstract of matters taken from this roll; the language that the board is authorized "to diminish or add to the list, and to require such different and further matters to be returned as it may deem advisable," completely vests the board with power—

To diminish the list,

Add to it, or

Change or make different and further classification.

The legislature must have foreseen that merely adding to or taking from the list might not result in the best classification, so left it to the board to require a different or further one, as from time to time, enlightened by experience, it might deem advisable.

The use of the terms different and further indicates the power to change the list in any particular.

Otherwise, why should the words "to require such different or further matters to be returned" be used in this immediate connection? To what does different relate, if not to the matters contained in the abstract as specifically prescribed?

That the Legislature intended to give the Territorial Board complete power to modify the classification of taxable property is apparent from the language used.

That any itemized class was intended by the Legislature to be irrevocably fixed by its statement in the empirical classification presented in the statute, is instantly overthrown by the very first provision authorizing a modification of the list—that authorizing a diminution.

It seems to us plain, and not open to argument, that any one or more—or all—of the items of classification in the statute may be omitted. Of course, the mere omission of property from the classification cannot be construed as an exemption of that class of property from taxation. It would, as we have before suggested, be included within the "all other property." Remembering that the express power to add to the list is also given, it appears instantly that complete power of classification is given.

We may illustrate by supposing that the board should "diminish" the list by omitting the item, "The whole number of acres other than town or city lots." That that is authorized cannot be disputed. Then, if nothing further is done, "the whole number of acres of land, etc.," would become a part of "all other property." Now suppose the board should conclude to add a class of property, being prompted thereto by very obvious considerations of convenience, as "patented mines;" the statute expressly authorizes it. And in fact the board has so deemed its authority to be, for it has been its practice to do that which is at first view a sub-classification. It is simply the entire obliteration of a class—putting it out of existence—ignoring it altogether, as if it had not existed, and making independently, a new classification.

Can it be said that the power to add to the list and to require "further or different matters" to be returned, is limited to the mere sub-classification or subdivision of the kinds of property specified in the statue? We think that this would not only be a too strict, but an entirely unwarranted construction. The statute authorizes "further or different" matters to be returned, thus repelling any application of the doctrine of ejusdem generis. If only the word "further" had been employed, the narrower

construction might be permissible; but the use of the word "different" precludes it. "Different" cannot be the same. "Further" might be. So, if it be conceded that mineral lands were, in the legislative contemplation, different from the whole body of acreage lands, it must be for that very reason that the Legislature empowered the board to require such "different" lands to be returned, just as it may of cultivated and uncultivated, timber and grazing land.

The power of the territorial board to do the acts in controversy had never been challenged until 1905. Year after year, after 1887, it had raised largely and lowered slightly, the valuation of classes of property, raising in each year the total value, as returned from the several counties, and no question of its power had been heard. The farmer, the ranchman, the stockman, the merchant, the banker and the laborer, have all acquiesced in the board's action and have paid their taxes accordingly. It happens, however, that for the first time, the valuation of mining property is raised, and raised substantially. It is nowhere contended, however, that such property is, even under this action, raised to an equality with other property, nor is it, nor can it be contended, that as a class it is valued at anything approaching its cash value. But it has been raised. The board has attempted to make it share in some slight degree the burdens of taxation that are now and for many years have been almost wholly borne by other classes of property.

The only objection urged by the appellant is that the board has exceeded its power. The justice of the action of the board is not denied.

"It is merely a question of power." Has it then taken

eighteen years to discover that the board is without this power; and has it remained for the shock produced by increasing the valuation of mines to awaken the dead and sleeping taxpayers of Arizona to this fact? Or is it that the burden of taxation, new upon this class of property, so far as actual weight is concerned, is unbearably irksome, and is sought to be returned to the shoulders of the people who have always borne it, and whom the appellant evidenly believes always should?

After all, as appellant contends, "It is only a question of power."

The judgment of the Court below should be affirmed.

Respectfully submitted,

E. S. CLARK,
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HORACE F. CLARK,
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of Counsel.

APPENDIX.

Extracts from Arizona Revised Statutes of 1901.

TITLE LXII.

REVENUE.

Chapter.

1. Levy of Taxes.
2. Property Liable to Taxation.
3. Assessment of Taxes.
4. Territorial Board of Equalization and Duties.
5. Duplicate Assessment Roll and Warrant for Collection of Taxes. Tax Collector.
6. Collection of Taxes and Duties of the Tax Collector.
7. Collection of Delinquent Taxes.
8. Collection of Taxes on Personal Property by Distress.
9. Poll Taxes.

CHAPTER I.

LEVY OF TAXES.

Amount of Tax Levy.

3831. (Section 1.) There shall be levied, annually, upon the real and personal property within this territory the following taxes: For territorial revenue, not exceeding thirty-five cents on each one hundred dollars of assessable property, and such further sum or sums as shall be necessary to meet the interest and payments of the territorial bonds as provided by law; and upon the same property the board of supervisors of each county is also hereby authorized and empowered to levy and collect for county purposes such additional and special taxes, not exceeding two dollars upon each one hundred dollars value of taxable property, and such further sum or sums as shall be necessary to meet the interest and payments of the county bonds as provided by law.

Levy of County Taxes. Assessment Rolls.

3832. (Sec. 2.) The board of supervisors of each county shall, on the third Monday in August of each year, assess the amount of taxes that shall be levied for county purposes, designating the amount which shall, on each one hundred dollars of taxable property, real and personal, be levied for such purposes; and shall add thereto the amount required by this title to be levied for territorial purposes. The board of supervisors of the respective counties shall, prior to the first Monday of February of each year, cause to be prepared suitable books for the use of the assessor, in which he shall enter the assessment rolls, as herein provided; and said books shall contain suitable printed or written heads, and be ruled to conform with the form of the assessment roll as provided in this title.

Lien of Taxes.

3833. (Sec. 3.) (Omitted.)

CHAPTER II.

Property Liable to Taxation.

Property Exempt from Taxation. Public Property. City and County Property. Charitable Institutions. Churches. Cemeteries. Property of Widows and Orphans.

3834. (Sec. 4.) (Omitted.)

"Real Estate" Includes what. Personal Property, How Assessed.

3835. (Sec. 5.) The term "real estate" whenever used in this title, shall be taken to mean and include the ownership of, or claim to, or possession of or right of possession to any land within the territory; and the claim by possession of any person, firm, corporation, association or company to any land shall be listed under the head of real estate: *Provided,* The term land as used in this section, shall not be so constructed as to include mining claims either lode or placer; the term personal property whenever used in this title shall be deemed and taken to mean, and it is hereby declared to mean and include all property of whatsoever kind or nature not included in the term real estate, as said term is defined in this section. All personal property in the hands of any trustee, agent, administrator, executor or receiver and all personal property mortgaged or pledged shall, for the purpose of taxation, be

deemed to be the property of the person who has the possession thereof. Whenever solvent debts are assessed, the person assessed may deduct therefrom his liabilities.

Property to be Assessed at Cash Value.

3836. (Sec. 6.) All taxable property must be assessed at its full cash value. The term "cash value," whenever used in this title, shall mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor. Land, and improvements thereon, shall be separately assessed.

Assessment of Shares of Stock.

3837. (Sec. 7.) (Omitted.)

To Whom Taxed.

3838. (Sec. 8.) (Omitted.)

Statement to be Given to Assessor.

3839. (Sec. 9.) (Omitted.)

Proceedings on Failure to Furnish Statement.

3840. (Sec. 10.) (Omitted.)

CHAPTER III.

Assessment of Taxes.

Bond of Assessor.

3841. (Sec. 11.) (Omitted.)

Oath of Assessor.

3842. (Sec. 12.) (Omitted.)

Deputies of Assessor.

3843. (Sec. 13.) (Omitted.)

Penalty for Neglect of Duty.

3844. (Sec. 14.) (Omitted.)

Suit on Assessor's Bond.

3845. (Sec. 15.) (Omitted.)

Assessor May Administer Oaths.

3846. (Sec. 16.) (Omitted.)

Assessment of Taxes. Property, How Listed. Furnishing Statement to Assessor.

3847. (Sec. 17.) Between the first Monday in February and the first Monday in June in each year, the county assessor, except as herein otherwise required of the territorial board of equalization, shall ascertain, by diligent inquiry and examination, all property in his county, real or personal, subject to taxation; and also the names of all persons, corporations, companies or firms, owning, claiming or having the possession or control thereof, and he shall then determine the full cash value of all such property, and shall list and assess the same to the person, firm, corporation, association or company owning or having the possession, charge or control thereof. The property of a ward shall be listed by his guardian; of a minor, having no guardian, by his father, if living, if not, then by his mother, if living, and if not, then by the person having the property in charge; of a beneficiary for whom property is held in trust, by the trustee. The property of every deceased person shall be listed by the executor or administrator. The property of persons or corporations whose assets are in the hands of receivers shall be listed by such receivers; of a body corporate, company, society or partnership, by its principal accounting officer, agent or partner. Property under mortgage or lease shall be listed by and taxed to the mortgagor or lessor, unless it be listed by the mortgagee of lessee. And all personal property in the hands of any trustee, agent, administrator, executor or receiver, and all personal property mortgaged or pledged shall, for the purpose of taxation, be deemed to be the property of the person who has the possession thereof. For the purpose of enabling the assessor to make such assessment, he shall demand from each person and firm, and from the president, cashier, treasurer, or managing agent of each corporation, association or company within his county, a statement, under oath or affirmation, of all the real estate and personal property within the county, owned, or claimed by, or in the possession or control of, such person, firm, corporation, association or company. If any person, officer or agent shall neglect or refuse, on demand of the assessor or his deputy, to give, under oath or affirmation, the statement required by this section, or if the owner of any property not listed by another person, shall be absent or unknown, the assessor shall fill out a list for such person, put-

ting therein all taxable property which he has reason to believe is owned by, in the possession or control of, said person, officer or agent liable to taxation. If the name of such absent owner is known to the assessor, the property shall be assessed in his, her or their name; if unknown to the assessor, the property shall be assessed to "unknown owners."

List of Property to be Given to Assessor.

3848. (Sec. 18.) It shall be the duty of every person owning or having charge of or under his control, property in this territory, subject to taxation, and as in this title provided, to make out and deliver to the assessor between the first Monday in February and the first Monday in June in each year a correct list of the same as required by law, whether he shall receive from the assessor a notice or demand to do so or not; and every assessment made against property subject to taxation shall be valid whether such notice or demand was received or not.

Contents of List.

3849. (Sec. 19.) The said list shall contain, first his lands by section or part of section, township and range, and where such part of section is not a legal subdivision or is unsurveyed, some other description sufficient to identify it, and his town lots, naming the town in which they are situated, and their proper description by number of lot and block or otherwise, according to the system of numbering in the town; second, the improvements on all such land and town lots; third, his personal property of every description or property held by him or under his control as an agent or in any fiduciary capacity. The list shall be signed and sworn to by the person making it, and the oath may be administered by the assessor or his deputy or by any other officer authorized to administer oaths.

Penalty for Furnishing False List.

3850. (Sec. 20.) (Omitted.)

Penalty for Refusing to Give List.

3851. (Sec. 21.) (Omitted.)

List to be Furnished When Person Has no Taxable Property.

3852. (Sec. 22.) (Omitted.)

Assessment of After Discovered Property.

3853. (Sec. 23.) (Omitted.)

Assessment of Water Ditches.

3854. (Sec. 24.) (Omitted.)

Assessment of Transient Herds of Sheep and Goats.

3855. (Sec. 25.) (Omitted.)

Penalty for Failing to File Affidavit.

3856. (Sec. 26.) (Omitted.)

Fees for Administering Oaths.

3857. (Sec. 27.) (Omitted.)

To Whom Assessed. Assessment of Railroads.

3858. (Sec. 28.) Except as in this title otherwise provided, all property shall be assessed in the name of the real owners, if the same can be reasonably ascertained, and if not, then in the name of "unknown owners," with a particular description of the property assessed sufficient for identification and the property of corporations or companies constructing canals, ditches, flumes, plank roads, gravel roads, telegraph lines, and similar improvements, shall be assessed to the company or corporation in the respective counties in which said improvements shall be situated; and railroad property shall be assessed as follows: On the first Monday in June in each year the territorial board of equalization shall meet at the office of the territorial auditor and they shall meet from day to day thereafter until the business of said board as hereinafter provided shall be accomplished. The duties of said board shall be to assess all taxable property in this territory belonging to railway corporations, except lots or parcels of real estate owned by the road within each county, and improvements thereon, and other improved property not connected with the operation of such road and located in any county which shall be taxed in the county where situate. The president, vice-president, general superintendent, auditor or general officer of any corporation operating any railway within this territory, shall furnish said board, on or before the first Monday in June in each year, a statement, signed and sworn to by one of such officers, showing in detail the whole number of miles of railroad in each county, also the whole number

of miles owned, operated or leased in the territory by such corporation making the return, and the value thereof per mile, with a detailed statement of all property of every kind and the value located in each county in the territory; second, also a detailed statement of the number and value thereof of engines, passenger, mail, express, baggage, freight and other cars or property owned by such railway, and on railways which are a part of lines extending beyond the limits of this territory; the returns shall show the actual proportion of the amount and full cash value of the rolling stock in use on the corporation's line which is necessary for the transportation of the freight and passengers, and the operation of the railroad in this territory during the year for which the return is made. The return shall also show the amount and value of property hereinafter designated in this section, and such further information shall be furnished as the board may in writing require. If said officers fail to make such statement, said board shall proceed to assess the property of the corporation so failing, and shall add thirty per cent. to the value thereof as ascertained and determined by the said board. The said property shall be valued at its full cash value, and assessments shall be made upon the entire railway within this territory, and shall include the franchise, right-of-way, road-bed, bridges, culverts, rolling stock, depots, station grounds, buildings, telegraph lines and all other property, real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, said board shall take into consideration all matters connected with said road necessary to enable them to make a just and equitable assessment of said railway property. On or before the third Monday in June in each year said board shall transmit to the board of supervisors in each county through or into which any railway may run, a statement showing the length of the main track of such railway within the county, and the assessed value per mile of the same as fixed by a *pro rata* distribution per mile of the assessed value of the whole property herein specified, with a description of the whole of said assessed property within the county, by metes and bounds or other description sufficient for identification. And the said assessment and *pro rata* shall be made with reference to the value of the property belonging to said railway other than the main track situate in each county and municipality through or into which said railway extends. Where the railroad of a railroad corporation lies in several counties, its rolling stock must be apportioned between them so that a portion thereof may be assessed in each county, and each county's portion must bear to the whole roll-

ing stock the same ratio which the number of miles of the road in such county bears to the whole number of miles of such road lying in this territory. Said board of supervisors shall cause the county assessor to enter said statement with the said description upon the assessment roll of said county under the proper heads therefor, with the total value of said assessed property carried out. At the first meeting of the board of supervisors held after said statement is received by it, they shall make and cause to be entered in its minutes an order stating and declaring the length of the main track and the assessed value of such railway, lying in each municipal corporation within their county, through which their railway runs, as fixed by the said territorial board of equalization, which shall constitute the taxable value of said property for taxable purposes, and the clerk of said board of supervisors shall transmit a copy of said order to the city council or trustees of such municipal corporation. All such railway property shall be taxable upon said assessment by the same officers and for the same purposes as the property of individuals within such counties and municipalities. If any railway company or any person shall not be satisfied with the assessment of the property belonging to said company by the territorial board of equalization, it or they may appear before said board at its meeting in August and show why such assessment should be lowered or changed.

Collection of Taxes on Personal Property. Bond for Taxes. Collection of Taxes by Proceedings for Discovery of Property.

3859. (Sec. 29.) (Omitted.)

Assessor Liable for Taxes on Unassessed Property.

3860. (Sec. 30.) (Omitted.)

Assessment Roll, Must Contain What.

3861. (Sec. 31.) It shall be the duty of the assessor to prepare a tax list or assessment roll, alphabetically arranged in the book or books furnished him by the board or supervisors for that purpose, in which book or books shall be listed or assessed all the real estate and personal property within the limits of the county, and in said book or books he shall set down in separate columns:

1. The name of the taxable inhabitants, firms, incorporated companies or associations, in alphabetical order, if known; if

unknown, the property shall be assessed to "unknown owners;" and if any person shall refuse to make a statement of his property under oath, as required by this title, that fact shall be noted under his name.

2. All real estate taxable to each inhabitant, firm, incorporated company or association, described by metes and bounds, or by common designation or name, if situate within the limits of any city or any incorporated town, describing by lots or fractions of lots; if without said limits, giving the number of acres as nearly as can conveniently be ascertained, and the location and township where situate; all improvements upon public lands, describing as nearly as possible the location of such improvements: *Provided*, That when two or more parties claim or give a description of the same land, it shall be assessed to each party making such claim or giving such description, according to the estimated value of the claims of each.

3. The cash value of real estate and the improvements thereon.

4. The cash value of all improvements on real estate where the same is assessed to a person other than the owner of said real estate.

5. The cash value of all personal property taxable to each person.

6. The total value of all property taxable to each, and no further description of personal property than that required by the foregoing provisions of this section shall be needed or be requisite to render the assessment binding and effective; and the description of real estate shall be sufficient if the same can be readily identified thereby.

Form of Assessment Roll.

3862. (Sec. 32.) (Omitted.)

Plat of City or Town Blocks.

3863. (Sec. 33.) (Omitted.)

Assessment Roll, etc., to be Delivered to Board of Supervisors.

3864. (Sec. 34.) On or before the third Monday in June of each year the assessor shall complete his tax list, or assessment roll, and shall attach his certificate thereto, and deliver it and the map book, and all of the original lists of property given to him to the clerk of the board of supervisors, and which shall be filed in the office of said clerk, and as soon as

he receives said assessment roll the clerk of the board of supervisors shall give notice of the fact, specifying therein the time of the meeting of the board of equalization by publication in some newspaper, if there be one published in the county, and if none, then in such manner as the board of supervisors shall direct; and he shall keep the roll open in his office for public inspection.

Board of Equalization.

3865. (Sec. 35.) The supervisors of the county shall constitute a board of equalization, of which board the clerk of the board of supervisors shall be clerk.

Quorum of Board.

3866. (Sec. 36.) (Omitted.)

Meetings of Board of Equalization.

3867. (Sec. 37.) The board of equalization shall meet on the first day of July of each year and shall continue in session from time to time until the business of equalization is completed: *Provided,* however, That it shall not sit at its July meeting after the twentieth day of July, at which time it shall adjourn to meet on the third Monday of August following, at which meeting it shall have the same powers it possessed at its July meeting.

Powers of Board of Equalization.

3868. (Sec. 38.) Said board shall have power to determine whether the assessed value of any property is too small or too large, and it may change and correct any valuation, either by adding thereto or by deducting therefrom, if, in its judgment from the information then possessed by it, the value fixed in the assessment roll is too small or too large, whether such value was fixed by the owner or by the assessor; and if the board shall believe it to be right to add to the assessed value of any property, it shall cause this fact to be inserted in the advertised notice hereinafter provided to be given; but no assessment can be raised by the board unless it is included in such advertised notice.

Notice of Proposed Increase in Assessment.

3869. (Sec. 39.) Upon the adjournment of the July meeting of said board, and at a time not later than the fifth day

of August following the clerk shall cause to be published in the official newspaper of the county a notice, which shall be headed: "Increased assessments." It shall then state as follows: "At the July meeting of the board of equalization, it, with the information then possessed by it, believed that the following assessments on the following described property are each too small, namely:" And then shall follow a list of all property the assessed value of which the board believed to be too small at its July meeting. Said list shall be made out with the name of the one to whom the property is assessed, at the left hand side. Opposite the name shall be a description of the property that is thought by the board to be assessed too low, and opposite the description of the property shall follow the amount for which it is assessed. Each of these items shall be in separate columns, each column separated only by a line, the left hand one containing the name, the next one the description, and the last one the assessed value. These names in said notice shall be arranged alphabetically. At the end of the list shall be added this further notice: "The owners of the above property and all who are interested therein, are hereby notified that the board of equalization will meet at the office of the board of supervisors, in the court house of ..... county, Territory of Arizona, at nine o'clock in the forenoon of the third Monday in August, 19...., at which time and place they will take up, consider and determine whether the assessments above specified, or any thereof, shall be increased, when and where you can be present with such witnesses as you may bring and will be given a hearing. These assessments will be by the board taken up and considered in the order as they appear above, unless, for good cause first shown, the time is extended in any case." This notice shall be signed by the clerk of the board, and shall be published at least once each week to the time of the meeting of the board.

Board of Equalization to Meet in August.

3870. (Sec. 40.) The board shall meet on the third Monday of August following at nine o'clock in the forenoon of said day at the office, and shall remain in session not longer than the first day of September following. It shall at once proceed with the consideration of the assessments specified in the advertised notice, and as part of their proceedings, proof of the publication of said advertised notice shall be made, as in other cases, and filed with the board. This publication, so proven, shall be conclusive evidence in all cases that the ones named therein received due and legal notice that the property

described therein would be considered by the board at its August meeting, that it would then decide whether the assessed value thereof should or should not be raised, and that the one owning the property and all others interested therein had full apportunity to appear and resist such increase.

Board May Compel Attendance of Witnesses.

3871. (Sec. 41.) (Omitted.)

Decision of Board to be Final, Unless Appealed From.

3872. (Sec. 42.) The decision of the board as to whether the assessed value of any property shall be increased, and, if so, to what amount, shall be final, and shall not thereafter be questioned in any proceeding involving the amount of the taxes legally and equitably due thereon, unless an appeal is taken as hereinafter provided.

Assessor to be Present at Meeting of Board.

3873. (Sec. 43.) At all meetings of the board the assessor shall be present, if it be practicably convenient for him so to do; and it is made his duty to supply the board with all information possessed by him, and at any meeting of the board it shall require the assessor to place on the assessment roll and to assess any property subject to taxation not on the assessment roll; and, in absence of the assessor, it shall be the duty of the board to place any such omitted property on the assessment roll and to assess its value; and all such omissions so supplied shall be as effective, and the assessment shall be as legal and binding as though the assessor had done it while making his assessment roll.

Minimum Valuation of Real Estate.

3874. (Sec. 44.) No assessor, board of supervisors or the territorial board of equalization shall assess any real estate at a less valuation than seventy-five cents per acre, nor shall any board of equalization reduce the valuation of any real estate below the sum of seventy-five cents per acre.

Appeal from Decision of Board of Equalization.

3875. (Sec. 45.) Any person, firm or corporation who is dissatisfied with the amount of his, their or its assessment as fixed by the board of equalization may appeal from the action of said board to the district court of the county in which said

board holds its sessions, on or before the twentieth day of September following the adjournment of said board. Appeals shall be taken by a written notice to that effect to the chairman or presiding officer of the board of equalization and served upon the clerk of said board in the same manner as a summons in a civil action: *Provided*, That no appeal shall be taken unless the appellant shall, before taking the appeal, pay to the county treasurer of such county the full amount of taxes levied and assessed upon the property of the appellant by the board of supervisors in accordance with the valuation of such property as fixed by said board of equalization, which payment shall be accompanied by a written protest addressed to and filed with such county treasurer, setting forth the reasons why the person, firm or corporation making such payment deems the amount of such assessment erroneous or excessive. At the time of such payment the county treasurer shall deliver to the party making the payment a receipt for the amount so paid, which receipt shall be served upon the clerk of said board of equalization with notice of appeal, together with a copy of such protest. Unless such payment is made before the taking of such appeal, the appeal shall be dismissed. Immediately upon the service of such notice of appeal the clerk of the board of supervisors shall transmit such notice, receipt and copy of protest, together with a certified copy of the record of the proceedings of said board of equalization relating to the assessment of the person, firm or corporation taking such appeal, to the clerk of the district court of such county. For such services the clerk of the board of supervisors shall receive a fee of ten dollars, which shall be paid by the party appealing to said clerk at the time of the service of the notice of appeal, and unless so paid the appeal shall be dismissed. Upon the filing of said notice of appeal, and the certified copy of the records aforesaid, the clerk of the district court shall docket the appeal in the name of the appellant, as plaintiff, and the county, as defendant, and such appeal shall be heard by the court, without a jury, at its first session thereafter, unless both parties consent, in writing, to a continuance of such hearing. At such hearing the court shall hear evidence touching the actual cash value of the property assessed, and shall take into consideration its character, whether improved or not, its surroundings, and if it be productive, the amount of its annual yield, and from the evidence submitted shall determine the actual cash value of such property at the time of the assessment, and must render its decision at once unless both parties consent, in writing, to a longer time. The decision of the court shall be in writing, and a certified copy thereof shall be

delivered to the board of supervisors, who shall cause the assessment roll to be corrected accordingly. Upon the hearing of such appeal it shall be presumed that the valuation of the property fixed by the board of equalization is correct, and the burden of proof shall be upon the party appealing to prove to the satisfaction of the court that such valuation is erroneous or excessive. If it be determined by the court that the amount of such assessment is excessive, judgment shall be rendered in favor of the appellant and against the county for the amount of taxes which the court determines to be excessive, with interest thereon at the rate of seven per cent per annum from the time of such payment, and the costs of appeal, which shall be paid as other judgments against the county. If the court shall determine that the actual cash value of the property is greater than the valuation fixed by said board of equalization, judgment shall be rendered in favor of the county and against the appellant for the taxes due upon the value of such property as determined by the court in excess of the amount fixed by said board of equalization, which judgment shall, from the time of its rendition, be a lien upon all the real and personal property of the appellant within the county, and execution may be issued to enforce said judgment as in civil cases.

Powers of Court on Appeal.

3876. (Sec. 46.) The intent and purpose of the foregoing section is to have all property and subjects of taxation fairly assessed, at the value which would be realized therefrom by cash sale, but not for a forced sale thereof, in such manner as such property and subjects are usually sold; and for this purpose the power and authority conferred by the foregoing section upon the court shall be liberally construed. But said court is expressly prohibited from reducing the valuation of any property below the fair cash value of the property, or what the property would sell for cash.

Abstract of Assessment to be Furnished to Territorial Auditor.

3877. (Sec. 47.) Immediately after the adjournment of the board of equalization in June (July), the clerk thereof shall make an abstract of the assessment roll, containing the whole number of acres of land, other than town or city lots, listed in the county, and the valuation thereof, and the value of the improvements thereon; the total valuation of town or city lots and the value of the improvements thereon; the whole number of miles of railroad within the county, and the value thereof; the whole number of horses, and their total

value; the whole number of mules, and their total value; the whole number of asses, and their total value; the whole number of cattle, and their total value; the whole number of sheep, and their total value; the whole number of swine, and their total value; the whole number of goats, and their total value; the gross amount of all other property, and the total valuation of all taxable property; which abstract the clerk shall make out in duplicate, filing one copy in the office of the board of supervisors, and transmitting one copy forthwith to the territorial auditor; but the territorial board of equalization is authorized to diminish or add to the above list, and to require such different or further matters to be returned, as it may deem advisable; and if the said board of supervisors or clerk shall fail to forward to the territorial auditor the said abstract, the territorial board of equalization must obtain the abstract or so much thereof as is necessary from other and reliable sources.

Penalty for Failing to Furnish Abstract.

3878. (Sec. 48.) (Omitted.)

CHAPTER IV.

Territorial Board of Equalization and Duties.

Powers and Duties of Territorial Board of Equalization.

3879. (Sec. 49.) The territorial board of equalization shall consist of the territorial auditor, who shall be deemed to represent the judicial district in which he resides, and who shall be chairman of said board, and two other members who shall be appointed by the governor by and with the advice and consent of the legislative council for the term of two years, or until their successors shall be appointed and qualified, and three of whom shall constitute a quorum for the transaction of business, and they shall, before entering upon the duties of their office, take the statutory oath of office and file the same in the office of the secretary of the territory; said board shall be appointed, one from each of the judicial districts other than that in which the auditor resides. The members of said board shall receive in full of all compensations ten dollars per diem for the days actually in session and twenty cents per mile mileage in going to and from the place of meeting, said mileage to be computed by the nearest practical route (no constructive mileage shall be allowed.) In case of a vacancy in said board, the governor shall fill such vacancy by appointing a suitable per-

son therefor from the judicial district from which the vacancy occured. The governor shall, at the end of each session of said board, audit the account of the members thereof for per diem and mileage, and the same shall be paid out of the general fund of the territory upon warrants drawn by the territorial auditor upon the territorial treasurer therefor: *Provided*, That no member of said board shall receive a per diem for more than twenty days in each year. If any of said members of the territorial board of equalization shall fail to attend any of the meetings of said board, as required by law, it shall be the duty of the governor to appoint a competent person or persons to act in the place of said absent member or members during his or their absence, and the said person so appointed shall have the same powers and authority with the same compensation as if regularly constituting said board. They shall sit at the office of the territorial auditor on the second Monday in August of each year for the purpose of, and they are hereby authorized and required to examine the various assessments, so far as regards the territorial tax, and equalize the rate of assessment in the various counties whenever they are satisfied that the scale of valuation has been adjusted with reasonable uniformity by the different assessors and boards of equalization. The said board shall continue in session until the business before it shall be disposed of, and shall have access to and make use of all records in the office of the territorial auditor and territorial treasurer which will aid them in the disposition of such business. The said board shall keep a record of the business transacted by it, and are authorized to appoint a secretary at a compensation of five dollars per day while engaged in active service, such compensation not to exceed the sum of three hundred dollars in any one year; his account for compensation shall be audited by the chairman of said board from time to time as such service shall be performed by said secretary, and shall be paid in the same manner as the compensation of the members of said board is paid.

Manner of Equalization.

3880. (Sec. 50.) The said board shall ascertain whether the valuation of property in each county bears a fair relation or proportion to the valuation in all other counties in the territory, and on such examination they may increase or diminish the valuation of property in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of property in the territory; but in no instance shall they reduce the aggregate valuation of all the

counties below the aggregate valuation as returned by the boards of supervisors of the several counties. And said board shall at the same time fix the rate of taxes for territorial purposes which is to be levied and collected in each county.

Territorial Board to Transmit Territorial Tax Rate to Counties.

3881. (Sec. 51.) On or before the fourth Monday in August in each year, the territorial auditor shall transmit to the board of supervisors of each county a statement of the changes, if any, which have been made in the assessment by the territorial board of equalization, and the rate of taxes which is to be levied and collected within said county for territorial purposes, but if for any reason, the said board fails to sit, or the board of supervisors fail to receive the statement of the rate of tax ordered by said board of equalization, the rate of thirty-five cents shall be deemed to be levied, and the board of supervisors of each county in making up the tax list required by this title shall compute and carry out in the proper column a territorial tax at the rate aforesaid.

CHAPTER V.

Duplicate Assessment Roll and Warrant for Collection of Taxes—Tax Collector.

Duplicate Assessment Roll.

3882. (Sec. 52.) As soon as the board of supervisors of each county shall have levied the taxes as provided in this title, they shall add up the columns of valuation and enter the total valuation of each description of property on the roll, and shall cause a true copy of said assessment roll to be made, to be styled a "duplicate assessment roll" with territorial, county and other taxes and totals of taxes to each person or name, carried out in separate money columns, and shall carefully foot up the several taxes therein levied, and shall give to the county treasurer a statement thereof, who shall immediately charge the amount of such taxes to the tax collector, and the said board of supervisors shall charge the same to the county treasurer. The chairman of the board of supervisors shall annex thereto immediately under his hand a warrant commanding the tax collector to collect from the several persons named in said roll the several sums mentioned in the last column of such roll, opposite their respective names, on or before the third Monday of December then next. Which said "duplicate assessment roll" and also the plat or map book shall be delivered to the tax collector on or before the third Monday in September.

Board to Determine Amount of Tax Levy.

3883. (Sec. 53.) As soon as the board of supervisors shall have made the determination and estimate provided for in this title they shall proceed to assess taxes for the amount estimated, adding thereto, if in the counties wherein a percentage is allowed to the tax collector for collecting such taxes, the amount allowed according to law for collecting fees or expenses upon the taxable property of the county, according and in proportion to the individual and particular estimate and valuation as specified in the assessment roll for the year. In making such duplicate assessment roll the value and tax of each particular species of property, as assessed, shall be put down in separate columns, which shall constitute the tax roll for the year; and no informality in complying with the requirements of this title shall render any proceeding for the collection of taxes illegal.

Form of Duplicate Assessment Roll.

3884. (Sec. 54.) Said duplicate assessment roll may be in the following form: (Form omitted.)

Authority to Tax Collector.

3885. (Sec. 55.) (Omitted.)

Statement to be Furnished Tax Collector.

3886. (Sec. 56.) (Omitted.)

Notice to be Given by Tax Collector.

3887. (Sec. 57.) (Omitted.)

Publication of Notice.

3888. (Sec. 58.) (Omitted.)

Bond of Tax Collector.

3889. (Sec. 59.) (Omitted.)

Proceedings When Tax Collector Fails to Give Bond.

3890. (Sec. 60.) (Omitted.)

Tax Collector May Appoint Deputies.

3891. (Sec. 61.) (Omitted.)

CHAPTER VI.

COLLECTION OF TAXES AND DUTIES OF TAX COLLECTOR.

(Omitted.)

CHAPTER VII.

COLLECTION OF DELINQUENT TAXES.

(Omitted.)

CHAPTER VIII.

COLLECTION OF TAXES ON PERSONAL PROPERTY BY DISTRESS, ETC.

(Omitted.)

CHAPTER IX.

POLL TAXES.

(Omitted.)

EXTRACT FROM ACT 92, ARIZONA SESSION, LAWS, 1903, AMENDING CHAPTER VII OF TITLE LXII OF THE REVISED STATUTES OF 1901.

Section 86. If on the first day of January, A. D., 1904, any of said lands or town lots contained in said "back tax book" remain unredeemed, it shall be the duty of the tax collector to proceed to enforce the payment of the taxes charged against such tract or lot by suit in the courts of competent jurisdiction of the county where the real estate is situated, which same court shall have jurisdiction without regard to the amount sued for, to enforce the lien of the Territory, and for the purpose of prosecuting a suit for taxes under this chapter the collector shall have power, with the approval of the county board of supervisors, to employ such counsel as he may deem necessary, who shall receive, as fees in any suit, such sum, not to exceed twenty-five per cent. of the amount of the tax actually collected and paid into the treasury, as may be agreed upon in writing and approved by the county board of supervisors before such services are rendered, which same shall be taxed as costs in the suit and collected as other costs, and

no such attorney shall receive any fee or compensation for such services except as in this section provided, and it shall be the duty of the tax collector when suit shall have been commenced against any tract of land or town lot in said "back tax book" to note opposite said tract of land or town lot such fact, also against whom suit has been commenced.

Section 87. All actions commenced under the provisions of this chapter shall be prosecuted in the name of the Territory of Arizona at the relation and to the use of the tax collector, and against the owners of the property; and all lands owned by the same persons may be included in one petition and in one count thereof, for the taxes for all such years as taxes may be due thereon, and the said petition shall show the different years for which taxes are due, as well as the several kinds of taxes or funds to which they are due, with the respective amounts due to each fund, all of which shall be set forth in a tax bill of said back taxes, duly authenticated by the certificate of the tax collector and filed with the petition, and said tax bill or bills, so certified, shall be *prima facie* evidence that the amount claimed in said suit is just and correct, and all notices and processes in suit under this chapter shall be sued out and served in the same manner as in civil actions in district courts, and in case of suit agaist non-residents, unknown parties, or other owners on whom service can not be had by ordinary summons, the proceedings shall be the same as now provided by law in civil actions affecting real or personal property. In all suits under this chapter, the general laws of this Territory as to practice and proceedings in civil cases shall apply, so far as applicable and not contrary to this chapter.

Supreme Court of the United States.

No. 280.—October Term, 1906.

Copper Queen Consolidated Mining Company, Appellant, *vs.* The Territorial Board of Equalization of the Territory of Arizona.	Appeal from the Supreme Court of the Territory of Arizona.

[May 27, 1907.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an appeal from a judgment on demurrer to a petition for a writ of certiorari. The object of the petition was to vacate proceedings of the Board of Equalization in 1905, by which the Board added very largely to the assessed valuation of patented mines and, in a less degree, of work horses and saddle horses, in Cochise County and other counties in Arizona. It was alleged that by these proceedings the Board increased the total valuation of property in the Territory and increased the valuation of the petitioner's property of the above-mentioned kinds. The writ had been issued by a single justice returnable before the full bench, but the case was heard on the demurrer by consent, and by the judgment the demurrer was sustained and the writ was quashed.

The errors alleged are two: first, that while the Board for purposes of equalizing might add to the total value of the property in one county and diminish that of property in another, it had no power to increase the total valuation of property in the Territory above the sum of the returns from the Boards of Supervisors of the several counties; and second, that the Board was bound to deal with the valuation of each county as a whole, and could not increase or diminish the valuations of particular classes of property within a county. The power of the Board depends, of course, upon statute, and it is said that the statute of Arizona was taken almost verbatim from one of Colorado, which had been construed by the Supreme Court of that State in accordance with the first of the petitioner's above contentions before it was adopted by Arizona. *People* v. *Lothrop*, 3 Color. 428. The construction, it is said, goes with the Act. *Henrietta Mining & Milling Co.* v. *Gardner*, 173 U. S. 123, 130. The second contention is based on an interpretation of the statutes, the supposed absence of an express grant of power, and later decisions in Colorado and other States.

On the other hand, while this Court cannot refuse to exercise its own judgment, it naturally will lean toward the interpretation of a local statute

adopted by the local court. *Sweeney* v. *Lomme*, 22 Wall. 208. *Northern Pacific R. R. Co.* v. *Hambly*, 154 U. S. 349, 361. *Fox* v. *Haarstick*, 156 U. S. 674, 679. And again, when for a considerable time a statute notoriously has received a construction in practice from those whose duty it is to carry it out, and afterwards is reenacted in the same words, it may be presumed that the construction is satisfactory to the legislature, unless plainly erroneous, since otherwise naturally the words would have been changed. *New York, New Haven & Hartford R. R. Co.* v. *Interstate Commerce Commission*, 200 U. S. 361, 401, 402. The statute of Arizona was reenacted in 1901 and was said by the Supreme Court to have been construed by the Board against the petitioner's contention ever since the Board was created, eighteen years before. Even apart from the reenactment a certain weight attaches to this fact. *United States* v. *Finnell*, 185 U. S. 236, 243, 244. *United States* v. *Sweet*, 189 U. S. 471. The presumption that the codifiers of 1901 knew and approved the practise of the Board certainly is as strong as the presumption that the original enactors of the statute knew a single decision in another State; and it is more important since it refers to a later time.

As an original question the construction adopted by the Supreme Court appears to us at least as reasonable as the opposite one contended for, and the variations in the Arizona Act from the prototype, if Colorado furnished the prototype, and the different background against which it was to be construed, seem to us to have warranted the refusal to be bound by the Colorado case.

We give a section of the General Laws of Colorado, 1877, and of the Revised Statutes of Arizona side by side.

2282. Sec. 43. Said Board shall ascertain whether the valuation of real estate in each county bears a fair relation or proportion to the valuation in all other counties of the state, and on such examination they may increase or diminish the aggregate valuation of real estate in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of real estate in the state; but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valua-

3880. (Sec. 50.) The said board shall ascertain whether the valuation of property in each county bears a fair relation or proportion to the valuation in all other counties in the territory, and on such examination they may increase or diminish the valuation of property in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of property in the territory; but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valua-

tion as returned by the clerks of the several counties.	tion as returned by the boards of supervisors of the several counties. And said board shall at the same time fix the rate of taxes for territorial purposes which is to be levied and collected in each county.

For convenience we take up the second of the alleged errors first. It will be seen that the word 'property' takes the place of 'real estate' at the beginning, and that the power given, instead being only a power to increase or diminish the aggregate valuation of real estate in any county, is to increase or diminish the valuation of property (not the property) in (not of) any county. The word 'aggregate' is left out, and the fact that it was left out favors the construction that apart from that fact would be reasonable, that the power extends to the valuation of any property, and is not confined to the valuation of all the property as one whole. This construction is further favored by the purpose of the changes in valuation, which is to 'produce a just relation between all the valuations of property in the Territory.' This phrase is interstitial in its working. It does not confine the equality to the valuations by county, but extends it to all the valuations of property. Yet a further argument may be drawn from the language of § 3874: "No assessor, board of supervisors, or the territorial board of equalization shall assess any real estate at a less valuation than seventy-five cents per acre." This recognizes the power of the Board to deal with a special class of property, and we may add, by way of anticipation, by also recognizing a function of assessment, does much to make inapplicable the reasoning of the Colorado decision upon the other point.

It seems to have been argued below that at least the Board was confined to dealing with property by the classes mentioned in other sections of the statutes, especially § 3849, 3861, 3877. But the classifications and specifications provided for in those sections do not affect the power expressly given by § 3880 as, we have construed the latter, and further, by § 3877 the Territorial Board is given power in very broad terms to change the list. It is not necessary to rely on this power to change the list for the power of the Board to change valuations of a particular class of property. It is mentioned simply to show that the powers given by § 3880 are not diminished by other provisions.

The first contention of the petitioner needs but a few words in addition to what we have said. The power to increase the valuation of property in any county is as power to increase it in all, or, at least, to increase the valuation of some kinds of property in all, so as to produce a just relation between them and the other valuations left undisturbed. We find nothing in the statute that requires the increase to be so adjusted that the total

valuation shall be unchanged. On the contrary, the prohibition against reducing it implies that the Board has the power of change and, but for the prohibition, might reduce the total. Therefore it may add to the total since the law does not forbid that. The Colorado decision to the contrary turned partly on the notion, which has been shown to be inapplicable to Arizona, that the Board of Equalization had no function of assessment. It also turned in part at least on the Constitution of the State, to which, of course, the statute was subject. There was no Constitution to be conformed to in Arizona and therefore the construction of the statute depends on the meaning of the words alone, and the Supreme Court of the Territory in construing them was left at large.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court U. S.